S. HRG. 101-878

ZUNI LAND CLAIMS; AND 1937 HOUSING ACT

HEARING

BEFORE THE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

ONE HUNDRED FIRST CONGRESS

SECOND SESSION

ON

S. 2203

TO SETTLE CERTAIN LAND CLAIMS OF THE ZUNI INDIAN TRIBE

AND

S. 1934

TO AMEND THE U.S. HOUSING ACT OF 1937 TO PROVIDE FOR THE PAYMENT OF FEES FOR CERTAIN SERVICES PROVIDED TO INDIAN HOUSING ASSISTED UNDER SUCH ACT

MAY 7, 1990
WASHINGTON, DC

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ZUNI LAND CLAIMS; AND 1937 HOUSING ACT

MONDAY, MAY 7, 1990

U.S. SENATE,
SELECT COMMITTEE ON INDIAN AFFAIRS,
Washington, DC.

The committee met, pursuant to notice, at 2:05 p.m. in room 485, Russell Senate Office Building, Hon. Daniel K. Inouye (chairman of the committee) presiding.

Present: Senator Inouye.

STATEMENT OF HON. DANIEL K. INOUYE, U.S. SENATOR FROM HAWAII, CHAIRMAN, SELECT COMMITTEE ON INDIAN AFFAIRS

The CHAIRMAN. The committee meets this afternoon to receive testimony on S. 2203, the Zuni Land Claims Settlement Act, and on S. 1934, a bill to amend the 1937 Housing Act.

The Zuni Indians occupied the area they now inhabit long before the arrival of the first Europeans, and historians believe that as early as 650 A.D. Zuni ancestors occupied parts of what is now the Zuni Pueblo.

Between 1250 A.D. and 1540 A.D. there were 36 large, plaza-oriented pueblos constructed. Modern Zuni culture and society date from the end of that period.

Coronado's journey in 1540 in search of the seven golden cities led him to the province of Zuni, where the population at that time was about 6,000. After a brief battle, the Spanish occupied one of the Zuni villages. Following contact with the Spanish, however, epidemics of smallpox, measles, and other diseases greatly reduced the population.

When the Spanish and Zuni first made contact with each other the Zuni were established farmers. Primarily they herded flocks of turkeys and cultivated corn. After the Spanish introduced other domestic livestock the Zuni engaged in livestock grazing, especially sheep, which are still an important part of Zuni life, culture, and economy.

Until the degradation of lands that is the subject of the claims for which legislative settlement is sought, the Zuni Indians continued to farm and cultivate corn. It is estimated that in the mid-1800's between 10,000 and 12,000 acres of land were in cultivation. Today less than 1,400 acres are being farmed.

In their law suit the Zunis allege that most of the loss is due to acts of omission or commission by the U.S. Government, which is trustee for the lands in question. Those issues will be discussed by witnesses this afternoon in support of S. 2203.

The second bill we are hearing today is S. 1934, a bill to provide the Indian Housing Authorities to repay funds to towns where Indian rental units are located for services those towns provide to the units. For that we will hear from witnesses from the Department of Housing and Urban Development and from the Fort Berthold Indian Housing Authority, and from two towns on that reservation—Parshall and New Town.

II

101st CONGRESS
2d Session

S. 2203

To settle certain claims of the Zuni Indian Tribe, and for other purposes.

IN THE SENATE OF THE UNITED STATES

February 28 (legislative day, January 23), 1990

Mr. Domenici (for himself, Mr. Bingaman, and Mr. McCain) introduced the following bill; which was read twice and referred to the Select Committee on Indian Affairs

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A BILL

To settle certain claims of the Zuni Indian Tribe, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

Section 1. This Act may be cited as the "Zuni Claims Settlement Act of 1990".

FINDINGS

Sec. 2. The Congress finds that—

(1) it is the policy of the United States to promote tribal self-determination and economic self-sufficiency and to support the resolution of disputes over historical claims through settlement;

(2) extensive damages to the trust lands within the Zuni Indian Reservation have occurred, including severe land erosion, loss of timber and minerals, spoliation of archaeological sites, and loss of the use of water;

(3) these damages have occurred, in part, by reason of acts and omissions of the United States in breach of its trust responsibilities;

(4) corrective measures are needed immediately to prevent continued degradation of tribal resources;

(5) the Zuni Indian Tribe has sought compensation from the United States for these damages through civil actions;

(6) further Indian prosecution of these claims will cause unnecessary stress on the working relationship between the Zuni Indian Tribe and the United States Government and delay cooperative efforts to remedy continuing problems; and

(7) a legislative settlement of these civil actions is appropriate because, notwithstanding any determination of liability, the United States retains a trust responsibility to the Zuni Indian Tribe for the continued protection of tribal resources.

ZUNI RESOURCE DEVELOPMENT PLAN

SEC. 3. (a) Before the first day of the third fiscal year beginning after the date of enactment of this Act, the Secretary of the Interior and the Zuni Indian Tribe shall jointly formulate a Zuni resource development plan for the Zuni Indian Reservation, which shall include (but not be limited to)—

(1) a methodology for sustained development of renewable resources;

(2) a program of watershed rehabilitation;

(3) a computerized system of resource management and monitoring;

(4) programs for funding and training of Zuni Indians to fill professional positions that implement the overall plan;

(5) proposals for cooperative programs with the Bureau of Indian Affairs and other private or public agencies to provide technical assistance in carrying out the plan; and

(6) identification and acquisition of lands necessary to sustain Zuni resource development.

SEC. 3. (b) The Resource Development Plan shall be implemented in a manner that protects resources owned and controlled by the Zuni Tribe and promotes sustained yield development.

TRUST FUND

SEC. 4. (a) There is hereby established within the Treasury of the United States the Zuni Indian Resource Development Trust Fund (hereafter in this Act referred to as the "Trust Fund"). The Trust Fund shall consist of amounts appropriated to the Trust Fund and all interest and investment income that accrues on such amounts.

(b)(1) The Secretary of the Interior shall be the trustee of the Trust Fund and shall invest the funds in the Trust Fund with a financial institution.

(2) The Secretary of the Interior shall not deduct any amount from the Trust Fund for administrative expenses or charge the Zuni Indian Tribe for expenses incurred by the Secretary in acting as trustee.

(c)(1) The funds appropriated to the Trust Fund under the authority of section 6 shall constitute the corpus of the Trust Fund and may be expended, subject to paragraph (2), only for the following purposes:

(A) payment of any loans, debts, or future expenses incurred by the Zuni Indian Tribe to any person for the purchase of land or obtaining or defending rights of access to the area described in Public Law 98–408;

(B) payment of up to $600,000 per year for two years for the formulation of the Zuni resource development plan described in section 3;

(C) payment of all costs, attorneys' fees, and expenses incurred by the Zuni Indian Tribe in the prosecution of docket numbers 327–81L and 224–84L of the United States Claims Court; and

(D) payment of all invoices submitted by any person to the Zuni Indian Tribe for which proper vouchers have been received prior to September 30, 1990, and subsequently approved by the Secretary of the Interior.

(2) The total amount of the corpus of the Trust Fund that may be expended under paragraph (1) shall not exceed $8,000,000.

(3) The interest and investment income that accrues on the corpus of the Trust Fund may be expended by the Secretary of the Interior pursuant to the Zuni resource development plan described in section 3.

(4) No funds appropriated under the authority of this Act may be used to make per capita payments to members of the Zuni Indian Tribe.

SETTLEMENT OF CLAIMS

SEC. 5. (a) Upon the deposit into the Zuni Indian Resource Development Trust Fund of all the funds authorized to be appropriated under section 6, all claims of the Zuni Indian Tribe against the United States that are raised in docket numbers 327–81L and 224–84L of the United States Claims Court shall be considered to be extinguished.

(b) This compromise settlement is made without a finding of liability on the part of the United States with respect to the claims raised in docket numbers 327–81L and 224–84L of the United States Claims Court.

(c) The United States shall continue to have a trust responsibility to protect the resources of the Zuni Indian Reservation.

(d) No sums paid or forgiven pursuant to this Act shall be offset against any award of judgment against the United States which may be rendered in favor of the Zuni Indian Tribe in docket number 161–79L of the United States Claims Court. Any sums paid pursuant to this Act shall be considered to be in the nature of a settlement of claims in law and equity against the United States and shall not be considered for any purpose to be payments to the Zuni Indian Tribe pursuant to a contract, grant, loan, cooperative agreement, judgment, or other kind of appropriation.

AUTHORIZATION OF APPROPRIATIONS

SEC. 6. There are authorized to be appropriated to the Zuni Indian Resource Development Trust Fund $25,000,000. Such funds shall remain available without fiscal year limitation.

II

101ST CONGRESS
1ST SESSION

S. 1934

To amend the United States Housing Act of 1937 to provide for the payment of fees for certain services provided to Indian housing assisted under such Act.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 20 (legislative day, NOVEMBER 6), 1989

Mr. CONRAD (for himself and Mr. BURDICK) introduced the following bill; which was read twice and referred to the Committee on Indian Affairs pursuant to the order of May 27, 1989 with instructions that if and when reported, the bill be referred to the Committee on Banking, Housing, and Urban Affairs for a period not to exceed 60 days, provided that said committee may propose amendments only to those provisions affecting the HUD Indian housing programs

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A BILL

To amend the United States Housing Act of 1937 to provide for the payment of fees for certain services provided to Indian housing assisted under such Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section 203(b) of the United States Housing Act of 1937 is amended by adding at the end the following: "Where a unit of general local government is located within the exterior boundaries of an Indian reservation and provides such services and maintains such facilities with respect to Indian housing, the Secretary shall make payments to that unit of general local government equivalent to the amount of the local property tax payment that would be payable if the housing were subject to such tax.".

The **Chairman**. Our first witness this afternoon is Congressman Richardson, one of the sponsors of the bill to settle certain claims of the Zuni Pueblo.

STATEMENT OF HON. BILL RICHARDSON, U.S. REPRESENTATIVE FROM NEW MEXICO

Mr. **Richardson**. Thank you very much, Senator Inouye. Again, my thanks for your being such a good friend of the Indian people.

First, Mr. Chairman, my thanks to the committee for allowing me the opportunity to testify to a matter that is very important to the Zuni people and to all of the people of New Mexico. The Zuni people are constituents of mine—a very proud Pueblo that, as you know, historically has done a lot for this country.

Mr. Chairman, I have co-sponsored the House companion bill to S. 2203, along with my colleagues from New Mexico, Representatives Skeen and Schiff. So this is a bill that is supported on a bipartisan basis by the entire New Mexico delegation and by many people on a bipartisan basis in my own State.

Mr. Chairman, the Zuni Claims Settlement Act of 1990 will settle out of court two lawsuits which the Zuni Tribe has filed against the United States for allegedly causing through mismanagement severe damage to the Zuni Indian Reservation in my State. The Zuni Tribe has agreed to compromise the lawsuits for the sum of $25 million, which is approximately $0.50 on the dollar for claim damages.

This settlement is unique in that it provides that the money received by the Zuni Tribe claims settlement will be used for land conservation projects under the control and direction of the tribe. The bill provides for the money to be put into a trust fund after the tribe's obligations are paid. Only the interest on the fund can be spent pursuant to a Zuni Reservation restoration plan.

This legislation establishes a mechanism which will assure these funds are expended in a calculated and effective manner which will directly benefit the tribe and its lands in perpetuity.

Instead of spending more valuable time and money trying to determine ultimate responsibility for the damages to the Zuni Reservation in the Court of Claims, the Zuni Tribe and the Department of the Interior will work together to solve continuing erosion problems.

The Zuni people and the residents of the State of New Mexico will be the beneficiaries of this farsighted settlement.

I wish to personally congratulate and thank the Governor and Tribal Council of the Zuni Pueblo, the Superintendent of the Zuni Agency, and the Albuquerque Area Director of the Bureau of Indian Affairs for working out this compromise which is going to be of lasting value for this and future generations.

Mr. Chairman, the Zuni people, themselves, will be the key to the future success of erosion control on the reservation. This bill will enable labor-intensive projects of reseeding and reforestation of the watershed areas to be funded in perpetuity. The building of check dams and other erosion control measures will be closely monitored and supervised, with technical expertise provided by the tribe and the BIA.

Mr. Chairman, it is my understanding that an amendment will be offered to this legislation recognizing the Zuni Tribe's claim to the interest on this settlement. This amendment entitles the tribe to recover interest, not land, and recognizes the unique nature of the Zuni situation. I will support this amendment and will offer similar legislation on the House side.

Mr. Chairman, this legislation will take us a step forward, and it will be a step toward redressing a tremendous injustice done to the Zuni people.

I appreciate this opportunity to speak in support of the bill and look forward to working with you.

Again, Mr. Chairman, I commend you for being such a champion of Indian people.

The CHAIRMAN. Thank you very much, Congressman.

Is it true that since we authorized the Zuni Tribe Pueblo to file suit the degradation of the land continues?

Mr. RICHARDSON. Mr. Chairman, it has. There is serious degradation and erosion. I had an opportunity to see this land for the first chance when I was in Zuni approximately 60 days ago. Again, it stresses the urgency of not just achieving the settlement, but the Congress passing the legislation.

The CHAIRMAN. Has the State taken any position—the Legislature or the Governor?

Mr. RICHARDSON. Mr. Chairman, we were not able, up until this moment, to get a position from the State. My understanding is that informally they do support it and they will be supplying their position to your committee shortly.

The CHAIRMAN. Congressman, I thank you very much, sir.

Mr. RICHARDSON. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is a very distinguished member of the U.S. Senate and a very dear friend of mine, the Honorable Peter Domenici.

STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Senator DOMENICI. Thank you, Mr. Chairman. How are you?

The CHAIRMAN. I am your cosponsor on this measure.

Senator DOMENICI. You sure are.

The CHAIRMAN. So it is going to pass.

Senator DOMENICI. Well, the better part of wisdom in a case like this is to shut up. However, I don't want to do that. I have a very brief statement. I would ask that you make it a part of the record.

The CHAIRMAN. Without objection, it will appear in the record following your oral presentation.

Senator DOMENICI. Mr. Chairman, I did introduce the legislation that you alluded to a while ago that authorized the Zuni people to file this lawsuit. It isn't as it if were filed yesterday; it has been pending for a long time. Frankly, I am sure that we are going to hear at least two things from the administration: First, that this case should take its normal course because the Zuni claim is less than those of us who are on this bill think it is; and then we might hear that we should not push this settlement ahead of other Indian needs.

In other words, if we were to take this $25 million out of the appropriation process to pay this, then perhaps other Indian needs might be put in some lesser priority position.

I am prepared to say, frankly, I think we will handle the second one in due course. I think that is kind of what we are for up here. We will do what is right. We are not going to appropriate this money to the Zuni and then renege on other significant priorities with the Indian people. So I'm really not very fearful of that if that is one of Interior's positions.

On the question of the lawsuit and how much it was really worth, let me just say, Mr. Chairman, from time to time you end up here in the U.S. Congress having to look at the best facts you can look at, get the best briefings you can, and listen as carefully as you can to those that you represent—in this case the Zuni people and their advocates. I guess in this case I just decided the time had come to settle this.

The Federal Government has had a long time to litigate this suit. It was not easy for the Indian people to develop their claims and put their evidence together. On the other hand, the United States has a very, very formidable capability to defend against this kind of suit. Frankly, I am not at all impressed with the idea that we ought to leave it in the courts yet longer to get a better presentation of the issues.

I do understand that in the Justice Department of the United States it is hard to keep personnel. There is a difficulty with continuity. There is a lot of turnover. But I am just going to be honest with you. I have looked at the Zuni problem. I believe that the U.S. Government is very probably at fault. Now, some judge might find it was not, but I have concluded the high probability is that our Federal Government was negligent.

I also believe that there is a high probability that the Zuni would get an award. I believe the award might even be more than this $25 million.

I also believe that if that happened the use of the award to solve the problem that has been caused and for the good of the Zuni people might very well be less effective than the well-planned commitment that is incorporated in this legislation as to how the money will be used for the people of the Zuni Pueblo.

Zuni Pueblo is a very, very old, old Indian institution and people. It was there in 1540. They have worked very hard to try to keep what they've got. In the mid-19th century they were cultivating 10,000 to 12,000 acres of crops. Today there are only 1,370. I don't stand before this committee and say that every bit of that differential is attributable to negligence. Agriculture has changed dramatically—we know that. Markets have changed dramatically.

Could they actually use all of that in a profitable manner in today's world? I don't know. Maybe not all of it, but certainly more than they are now doing.

So the best evidence that I have is that the erosion of the Zuni's lands, as I indicated, is due to negligence of the Federal Government. I think they would establish a claim of at least $25 million—maybe more—and we are going to settle it for $25 million in a trust fund to remedy these damages.

I think you already know, Mr. Chairman, in agreeing to co-sponsor along with the Republican ranking Member, Senator McCain, that this money would be used primarily to develop and implement a Zuni Resource Development Plan for watershed rehabilitation, land protection, resource management, and renewable resource development.

I believe those are all very good uses. You can never put somebody back to where they were before they were damaged, but I think we have put into legislation that which is most apt to have a high probability of success there, of doing the right thing with the money as it compares with the damage that was caused by inaction or action.

I think we ought to pass this. I think even if the administration doesn't like it exactly as it is I think we ought to hear them. If they have something new to offer, obviously I am for considering that.

I would be surprised, however, if, after all this time in not getting this case to trial, which is not Zuni lawyers' or the Zuni people's fault, the Department of Justice has any better feel for what this case's ultimate results will be than this committee. Without bragging, I don't think they have a much better view than I have.

I do not run the Justice Department, and neither do you and this committee, but I think this is a fair settlement and I think we ought to get it done.

Thank you, Mr. Chairman.

[Prepared statement of Senator Domenici appears in appendix.]

The CHAIRMAN. Senator, I agree with you that the Zunis have not only an appropriate but a strong cause of action in this case. I have studied as much as I can of this matter. I am convinced that, as a result of omission and commission on the part of our government, these lands have been degraded. And I think this is a timely bill because as we talk these lands continue to be degraded.

As to the suggestion by Interior that if the Zunis should prevail in this measure they would have to take the money out of other Indian programs, I am surprised that the Government of the United States would use that argument. If we have a cause of action, if the Zunis have a cause of action, if this cause is just, then it should not be funded by penalizing other Indians.

I can assure you, Senator, that we will give this matter full consideration and, if it goes through as we hope it will, the moneys that we will appropriate will not come from the backs of other Indians. That pledge I will make to other Indians.

So I commend you for looking after the concerns of your constituents. They should be proud of your representation.

Senator DOMENICI. Thank you, Mr. Chairman. I agree with you on the appropriations.

Maybe I was a bit more rigid in my explanation of what they might say about prioritizing. They might be saying that if we let it go to judgment, Mr. Chairman, that it might come out of a different fund because the judgment fund is different than an appropriated fund. It might be their position that it wouldn't disturb other Indian programs if it came out of the judgment fund. I am aware of those kind of differences, but I believe we can handle this in our processes.

On January 23 of this year the Department of the Interior, under signature of the Deputy to the Assistant Secretary, Patrick Hayes, wrote me a letter in response to a series of inquiries on this. I will not say that it is a different position today; nonetheless, I think the committee ought to see it because it is a bit less rigid. It raises a few questions, but I think it is fair to say the Department was not dogmatically opposed. I think it might appropriately follow my testimony, with your permission.

The CHAIRMAN. Without objection, that letter will be made part of the record.

[Patrick Hayes letter appears in Senator Domenici's prepared statement in appendix.]

Senator DOMENICI. Thank you very much, Mr. Chairman.

The CHAIRMAN. Thank you very much.

Before we proceed I would like to place in the record a testimony of Senator Jeff Bingaman. He has asked me to place this in the record. Without objection, So ordered.

[Prepared statement of Senator Bingaman appears in appendix.]

The CHAIRMAN. The statement of a co-sponsor of this measure, Senator John McCain, will also be made part of the record.

[Prepared statement of Senator McCain appears in appendix.]

The CHAIRMAN. Now I call on the Deputy Assistant Secretary for Indian Affairs of the Department of Interior, Patrick Hayes.

Welcome, sir. Please proceed.

STATEMENT OF PATRICK HAYES, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS, TRUST AND ECONOMIC DEVELOPMENT, U.S. DEPARTMENT OF THE INTERIOR

Mr. HAYES. Thank you, Mr. Chairman.

Mr. Chairman, I have submitted a written statement for the record. With your indulgence, I would ask that it be included in its entirety. I do have a summary of that statement that I would like to present at this time.

The CHAIRMAN. Your full statement will be made part of the record immediately following your oral presentation.

Mr. HAYES. Thank you.

Mr. Chairman and members of the committee, I am pleased to present the view of the Department of the Interior on S. 2203, the Zuni Claims Settlement Act of 1990. We oppose enactment of S. 2203 for the same reasons that we opposed enactment of H.R. 4750 in testimony before the House Committee on Interior and Insular Affairs in July 1988. The two bills are identical in substance except that in the latest version of the bill the requested appropriation to fund the Settlement Trust Fund has been raised from $20 million to $25 million.

S. 2203 provides for the cash settlement of two Zuni tribal claims, docket numbers 327-81L and 224-84L, now pending before the U.S. Claims Court. Since these claims are currently in litigation, we defer to the Department of Justice for a discussion of their merits and any potential liability which may exist.

I would like to limit my comments to what are current and ongoing activities on the Zuni Reservation, what projected activities may be, and what additional activities could be done to address this problem.

Existing programs are available to address the needs of the Zuni Tribe. We strongly encourage the tribe to pursue funding for its natural resource rehabilitation program through these existing programs.

Section three of the proposed bill directs the Secretary and the tribe to jointly formulate a resource development plan for the Zuni Indian Reservation. It is to include a plan to identify and acquire lands necessary for development of the resources on the Zuni Indian Reservation.

In 1988 the Bureau initiated a program to complete an integrated resource management plan—IRMP—for all Indian reservations under its jurisdiction. The IRMP concept incorporates the natural as well as the human resources on reservations to develop a socioeconomic plan which will guide the tribe and the Federal Government in reaching decisions affecting future economic development.

The IRMPs are developed as a team approach, with tribal and BIA staff participation. The process also allows for including outside parties to participate on the team should the tribe and Bureau agree such participation would be beneficial.

The process also includes a series of public hearings to ensure local involvement in the decisionmaking process. The IRMP requires tribal concurrence and official approval of the final plan. The basic data themes lacking for initiation of an IRMP on the Zuni is the rangeland vegetation and livestock information.

The Bureau is in the process of collecting these baseline rangeland and livestock data from the IRMP. The Bureau and the Zuni Tribe will be in a better position to determine the type of resource development required to improve productivity and income from the natural resources found on the Zuni Reservation.

I would like to emphasize that one of the most beneficial items the Zuni Tribe could do to assist in this activity would be in the area of grazing control. I would encourage the tribe to work with the Bureau to develop and enact the livestock and grazing ordinance. Such an ordinance would establish criteria for: First, establishing grazing eligibility; second, grazing control; third, grazing enforcement procedures, a fee structure for privilege of grazing livestock on the reservation, the operation and maintenance of rangeland, improvement facilities, and establishing and enforcing animal health standards.

Finally, I would like to stress the need for a cooperative resource conservation and management program with private, State, and Federal entities to provide technical assistance in conducting a resource management program.

The policies and activities of the surrounding land management organizations may have—and in many cases have—a direct impact on the Zuni. It is important that these entities be conscious of the impacts of their activities off site and attempt to develop programs which can benefit the total watershed regardless of ownership.

This concludes my prepared statement, Mr. Chairman. I would be happy to answer any questions you may have.

[Prepared statement of Mr. Hayes appears in appendix.]

The CHAIRMAN. Thank you very much.

I realize that your flexibility, if any, is limited by direction which you receive from above, from OMB and others, and so it is difficult at times to speak your mind. Speaking of that, is it correct that your representative in the field who worked with the Zunis recommended that this bill be considered favorably?

Mr. HAYES. I believe that is correct, sir. Both the Zuni Agency superintendent and the area director in Albuquerque are supportive of this effort.

[Letter from Sid Mills appears in appendix.]

The CHAIRMAN. They must have some reason for that.

Mr. HAYES. Yes, sir; probably.

The CHAIRMAN. Now, I notice that throughout our history of relations with Indians—not just with the Zunis—we have made many promises. In 1976, for example, we approved the watershed project. This is 1990. We are told that at the earliest it will be completed in 1996. That is 20 years. Even at that, a lot of things may happen. I would venture a guess that when 1995 comes we will find some excuse to extend that another 10 years.

How long do you believe the Zunis should wait? They have had one lawyer and Justice has had nine. What would be a reasonable time for the Zunis to wait for their day; 20 years, 50 years?

Mr. HAYES. I can't tell you, Senator. All I can repeat is the fact that the Zuni Indian Reservation is scheduled for a watershed program in 1996, as you have pointed out. Outside of that, I don't know whether or not the tribal attorneys and the Justice Department attorneys can move the litigation along and bring it to some sort of resolution through that process.

The CHAIRMAN. Well, I appreciate your statement. As I said, I understand. I have worked with the Government long enough to know that there are times when you bite your tongue when you give your statements around here. I feel for you. But I hope that you can work with the Zunis and come forth with something if at all possible.

I thank you very much, sir.

Mr. HAYES. Thank you, Mr. Chairman.

The CHAIRMAN. Our next witness is the Deputy Assistant Attorney General, Environment and Natural Resources Division of the U.S. Department of Justice, Mr. Myles E. Flint.

STATEMENT OF MYLES E. FLINT, DEPUTY ASSISTANT ATTORNEY GENERAL, ENVIRONMENT AND NATURAL RESOURCES DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. FLINT. Good afternoon.

Mr. Chairman, I have a written statement which I think has been delivered to the committee.

The CHAIRMAN. It will be made part of the record, sir, following your oral presentation.

Mr. FLINT. Rather than repeat that, I do have a few comments that I would like to make by way of introduction.

On behalf of the Department of Justice I am pleased to have this opportunity to present our views with respect to S. 2203, a bill to provide a settlement fund for restoration of certain lands on the Zuni Indian Reservation. However, the Justice Department does oppose passage of this bill for the same reasons that we opposed passage of an almost identical bill in 1988.

I would like to focus briefly on section 5 of that bill, the primary source of our objection.

Section 5(a) of S. 2203 provides for the extinguishment of the Zuni's claims in civil actions 327-81L and 224-84L, which are consolidated in the U.S. Claims Court.

Section 5(b) provides that the settlement is made without a finding of liability on the part of the United States.

Section 5(d) provides that funds appropriated from the bill may not be offset against any recovery in docket 161-79L now pending in the Claims Court.

At the current stage of the litigation, which is nearing the trial phase, we believe even more strongly than we did at the time of our prior testimony that such compensation is legally unwarranted. Further, this bill would disrupt an orderly process now underway pursuant to authorization of Congress and we believe is inappropriate.

The complaint in 327-81L, which was amended in 1984, alleges that the United States appropriated natural resources from the reservation for its own use. In its pleadings the United States has denied that it was responsible for any damage to the reservation or that it appropriated reservation resources for its own use.

The complaint in number 224-84L was filed in 1984 pursuant to 28 U.S.C. sections 1491 and 1505. The allegations there are simply that the damages that were allegedly created by the United States prior to 1978 have continued since 1978.

There has been considerable progress in this litigation. The claims that are made are complex and they involve technical issues concerning the cause of erosion and the existence of erosion on the Indian reservation.

The tribe and the U.S. Government have now prepared and exchanged original expert reports, as well as rebuttal reports, and are scheduled to submit surrebuttal reports late this summer.

Following submission of those reports and the possibility of a small amount of discovery, the parties will be ready to begin preparation for trial and trial would be in the relatively near future.

Although the Justice Department actively supports legislative settlement of litigation in appropriate circumstances, we do not think that the circumstances here warrant such a settlement.

The government's experts have generally concluded that the United States is not responsible for the erosion that does exist, in fact, on the reservation. For example, our experts have found that the erosion complained of is, in many instances, the naturally occurring type commonly found in the Southwest and is not due to acts and omissions of the United States.

The allegations made by the tribe in its two cases are serious. It is our view that they are the type of allegations that can be best considered and weighed in a judicial proceeding where all evidence of both parties is fully and carefully presented.

Accordingly, we have determined that we must oppose the passage of S. 2203.

Thank you, Mr. Chairman.

[Prepared statement of Mr. Flint appears in appendix.]

The CHAIRMAN. You indicated that the trial should begin in the near future. When is the near future?

Mr. FLINT. Well, I can't give you an express date. The last reports that are supposed to be exchanged by the parties are to be exchanged at the end of this summer. There have been judge changes on the claims court. We now have a new judge, Judge Hodge, who is a new member of that court. I assume that he will want to hit the ground running and will try to move this process along. Certainly we have no reason to oppose moving it once those reports have been completed.

The CHAIRMAN. Some time ago the Zunis were awarded the judgment, but it took 5 years for the judge to make his decision on the award, itself. So it is with that type of background that the Zunis, for good reason, are getting a bit impatient. This suit was authorized in 1978, if I recall. The suit was brought in 1981. It is going to be 10 years now soon.

Mr. FLINT. I understand. And it is because of the complex nature of the claims that have been made that have raised issues concerning what the cause of the problems that exist on the reservation is and when they occurred. That, quite frankly, took a lot of time for technical people to examine and make determination.

The CHAIRMAN. And your lawyers believe that there is absolutely no cause of action here?

Mr. FLINT. We know when we are in court, Senator, that there is always a risk. I would never state to this committee, nor to anybody, that the United States never has any risk in litigation. It is our view, based on the evidence that we have seen produced by the witnesses who have been doing work for the U.S. Government, that any liability of the United States if found in this case would be substantially less than that which is being proposed for payment in the bill.

The CHAIRMAN. And although the Department of Justice disagrees with the method we are taking to resolve this matter, you do believe that we have the proper Constitutional authority to do this?

Mr. FLINT. We have never questioned that.

The CHAIRMAN. I thank you very much, Mr. Flint.

Mr. FLINT. You are welcome.

The CHAIRMAN. Now we will hear from the Zunis. The Governor of the Pueblo of Zuni of New Mexico, Robert Lewis; accompanied by the tribal attorney, Stephen Boyden of Salt Lake City; the executive director of the Institute of NorthAmerican West of Seattle, E. Richard Hart; Dr. Robert Delaney of Albuquerque; and Dr. Floyd O'Neill of Salt Lake City, UT.

STATEMENT OF ROBERT LEWIS, GOVERNOR, PUEBLO OF ZUNI, ZUNI, NM, ACCOMPANIED BY STEPHEN BOYDEN, ATTORNEY, SALT LAKE CITY, UT; E. RICHARD HART, EXECUTIVE DIRECTOR, INSTITUTE OF THE NORTHAMERICAN WEST, SEATTLE, WA; ROBERT DELANEY, ALBUQUERQUE, NM; AND FLOYD O'NEIL, SALT LAKE CITY, UT

Mr. LEWIS. Thank you, Mr. Chairman.

I thank you for the opportunity to allow the Zuni Indian Tribe to appear before you this afternoon.

I have submitted my prepared statement, as well as those that were given us by two former Governors and my councilmen, all of whom have made statements to submit for the record. I would just like to highlight some of the things that tie in with this situation.

The CHAIRMAN. All of you who have submitted prepared statements can be assured that your statements will appear in total in the record following the oral presentation of Mr. Lewis.

Mr. LEWIS. Thank you, sir.

If the Zuni Indian Tribe had some funds of its own, we would not be up here today seeking assistance for remedying the situation that has occurred in regard to our lands in the area of soil erosion that has gotten to the point where we have to do something about it.

We know that for many years nothing has ever been attempted in the area of repairing soil erosion processes.

In the early days when the U.S. Indian Service got into the operation of working with Indian tribes, and in the early 1900's when the Zuni Agency was created and a boarding school was established, the superintendent at that time and those who followed never really cared to look into what was happening on our land base.

Clear-cutting of timber had already been done up in the northeast corner of our reservation in the watershed area. These happenings have caused great problems that are now existing.

We do have flash floods in our area at times that take water down into the valley where our farms had been. At present we have a dam that is unsafe and that is not holding any storage for irrigation purposes. And the tributaries that enter into the Zuni River from up above to the east all flow into the village area.

We are very much concerned and would like to get into the problem of resolving this situation with the assistance and action we have taken to obtain the funds that we feel are coming to us because of neglect that has taken place in past years.

It was 2 years ago I talked to the superintendent of our agency, Mr. John Gray, and discussed with him the idea of settling out of court the two claims that were in the docket that are mentioned in our statement. He agreed, since he knew what our situation was, that we should do that. And so we got into discussing the idea within council with him and also with our area director in Albuquerque, of the Bureau of Indian Affairs.

Because they know our situation out in the field, they indicated that we would be doing the right thing if we could get this settlement out of court to do the necessary work that has to be done, which had been neglected for so long.

And so this is why we have had the assistance of the folks up here to introduce this bill. We, as a tribal council, are all endorsing it, as well as the before-mentioned former Governors that have indicated through their statements that they are endorsing S. 2203.

We certainly want to give special thanks to you and your staff for being so accommodating in arranging this hearing date. I would like to thank the chairman and Senators Domenici, Bingaman, and McCain, for sponsoring S. 2203.

We feel like we are able to plan comprehensively with the assistance of the Bureau staff to accomplish and implement the projects that we have to do in just about all directions of our reservation and get things under control, because if we wait as litigation goes on we will never get to the point of remedying the situation. Things can get worse, and there is no more room hardly in our main storage dam to hold any more silt.

And so we are appreciative of the hearing that you have set up for us to make our statements in regard to this problem.

I would like to turn the microphone over to our tribal attorney, Steve Boyden, for his statement and let him introduce the members that are seated up here with us on his staff.

Thank you, sir.

[Prepared statements of Mr. Lewis, Mr. Boyden, Mr. Hart, Mr. Delaney, Mr. O'Neil, and others appear in appendix.]

The CHAIRMAN. Thank you, Governor.

Mr. Boyden.

STATEMENT OF STEPHEN BOYDEN, ATTORNEY, SALT LAKE CITY, UT

Mr. BOYDEN. Thank you very much, Mr. Chairman. It is a pleasure to be here. We are thankful for this opportunity.

We filed these two lawsuits, as was mentioned before, back in 1981 and 1984 respectively. It was hoped at that time that those lawsuits would proceed along the normal course, but we have learned that litigation in the U.S. Claims Court does take a substantial amount of time. We have filed an aboriginal claim which was tried back in 1982. We are still struggling with that. We don't have a final decision yet. There is a finding with regard to liability, and also one for aboriginal area, but right now the issue is how much is that land worth. That lawsuit is still pending, and it looks like it will go on for some time yet.

So, looking to where we are right now, if we went to trial we are another 8 or 10 years away from where we are now in the present aboriginal lawsuit, which hasn't ended.

I can understand why the Governor and the superintendent wanted to settle the case and get on with the business of land restoration rather than spend their time in courts. Everyone at this table will probably be dead and gone if it continues on its present course before it reaches completion.

May I suggest that at this time we have one of our experts, Richard Hart, explain very briefly what the merits of the case are as the Zuni Tribe sees it, and ask him if he could do that at this time, Mr. Chairman.

The CHAIRMAN. Mr. Hart.

STATEMENT OF E. RICHARD HART, EXECUTIVE DIRECTOR, INSTITUTE OF THE NORTHAMERICAN WEST, SEATTLE, WA

Mr. HART. Mr. Chairman, it is indeed an honor to be before this committee. I have prepared the written testimony that I have submitted to the committee staff at the request of the Zuni agency superintendent, the tribe, and also to present before the House Interior and Insular Affairs Committee when H.R. 4750 was before that body.

There is a great deal of detail in the written testimony that I have submitted, both of myself and of the 10 other experts which are included in the other volume. I would like to indicate that these are just summaries of the much greater body of evidence that has been submitted to the court.

I have examined carefully over many years all of the evidence that has been presented and am convinced that the conclusions I am about to summarize are the case.

Zuni began with an aboriginal territory of 15 million acres. They have been reduced to merely 400,000 acres today. That reduction, in itself, and the concurrent consolidation of their large herds of sheep, contributed to over-grazing and the degradation of the landscape.

But, in addition to erosion, there are a number of other kinds of damages that I would like to quickly mention which are also part of this case.

Erosion, as we have valued this case, is 38 percent; loss of water by non-Indian parties upstream, 43 percent; loss of salt, 5.5 percent; loss of timber and trespass, 2.5 percent; archaeological damages, 10.4 percent. The total value—and I have indicated in detail in my written testimony the method that I have used to determine this—is $48 million in damage. Thus, the erosion is less than 40 percent of the total value.

The United States cut timber on the Zuni Reservation for its own use without any payment to the tribe. They left a clear record of this cutting—Government use, 113 million board feet on this document alone. The United States mined coal without any payment—this is one of the Zuni mines—of royalties. And, in fact, the area director for the Bureau of Indian Affairs in 1937 admitted that was being improperly mined and that the United States owed the tribe a royalty.

The United States not only withdrew hundreds of thousands of tons of salt from the Zuni Salt Lake, but even charged the Zunis, themselves, when the Zunis tried to get salt from their own centuries-old lake.

The United States, in the early part of the century, guaranteed the Zunis that they would protect the watershed—the water that flowed into the reservation and that supplied Zuni agriculture. This is one letter where the supervising engineer for the Department of the Interior promised the tribe that they would not allow anyone to divert water.

However, they allowed a large dam to impound 13,500 acre feet of water that the Zunis had been using at Pescado, the farming village, for centuries on the eastern part of the reserve. This water has been diverted from the Zunis for nearly a century now.

In the mid-19th century, as you pointed out, Mr. Chairman, the Zunis had extensive fields—10,000 to 13,000 acres of crops. Here we see cornfields in the back, specialty crops in the front. Three main causes conspired to cause the unusual and unprecedented cycle of erosion that occurred between 1890 and 1930.

These three causes were as follows: The watershed above Zuni was totally denuded through timber cutting. It was described by the National Forest Service in 1940 as the best piece of native timber in the American Southwest—2 billion board feet of timber. This merchantable timber was all cut between 1890 and 1930. This was probably the principal cause of the degradation of the Zuni Reservation.

At the same time, a series of dams were built on the reservation, all of which failed. These were intended originally to allow allotment. The Zunis resisted allotment.

Third, the overgrazing that I mentioned earlier.

The United States was clearly responsible for all of these damages. I think that we have produced a modest, conservative estimate of the value of these damages, and I would just like to conclude by emphasizing that the model the Zunis have produced or will produce over the 2-year period that is outlined in the act is exciting to conservation groups, both environmental history, environmental planning, and conservation groups nationally and internationally.

IUCN in Geneva has committed itself to help distribute the Zuni plan internationally. The Institute of the NorthAmerican West and others have agreed to help distribute the Zuni plan nationally. Many of these groups have said this legislation has value in the distribution of this plan—if for no other reason, enough value to pass the act.

I thank you very much, Mr. Chairman, for the opportunity to speak today.

The CHAIRMAN. Thank you very much.

Mr. BOYDEN. Mr. Chairman, unless there are other questions, there are two separate amendments that deal with two Zuni matters that we would like to recommend to this committee.

The first deals with the act of August 28, 1984, which is the Zuni Heaven area located in the State of Arizona. When the description was made for that area for the use of the Zuni Tribe for religious purposes, there were inadvertently left out two sections of land. That was done not because the Zunis did not know where they used the land; it was a problem of staff when we were in the field not being able to locate it on the map properly. We have since talked with the landowner involved, and he is more than happy to exchange some sections in the near vicinity. We would ask that this committee consider adding sections 13 and 23 of Township 24 North, Range 26 East of the Gila and Salt River meridian to the description in section 1 of that act, which would then permit the Secretary of the Interior to acquire those two sections to add to the Zuni Heaven area.

The second amendment deals with the first lawsuit which was filed by the tribe back in 1979. Under Docket 161-79L the tribe filed a claim for its aboriginal lands. If we could put that map back up that we had up originally, you'll see that it dealt with the large area which is encompassed with the brown, red, orange, and other areas that surround the present-day reservation.

The court held in that lawsuit in 1987 that the land represents the areas actually used and occupied by the Zuni Indian Tribe as of 1846. It further held that the land was recognized by the countries of Spain and Mexico as being Zuni.

The court then was asked by us—then the judges changed. We addressed the question of interest as to whether or not this judgment would bear interest. The successor judge said that in order for the tribe to have a 5th amendment taking it was necessary for Congress to specifically recognize that.

I would like to now turn the time over to Dr. Robert W. Delaney to explain very briefly the background of Spanish and Mexican involvement with the title to the Zuni land.

Dr. Delaney is a professor of history and has studied this matter thoroughly for the tribe.

The CHAIRMAN. Dr. Delaney, welcome, sir.

STATEMENT OF ROBERT DELANEY, ALBUQUERQUE, NM;

Mr. DELANEY. Thank you very much, Mr. Chairman.

I, too, have a written statement, but I would prefer to summarize this very briefly if it pleases the committee.

As referred to by Mr. Boyden, the Pueblo Indians generally were allowed, under Spain and later on under Mexico, but first of all under Spain, all of the land they effectively used and occupied. Now, that was under Spain, and this has been confirmed by courts of the United States. That continued under the Empire of Mexico from 1821 to 1823, and that same policy continued under the Republic of Mexico from 1823 to 1846 when the area that includes the Zuni area was taken over by the United States under General Carnan and his army of the west.

Now, in order to take care of those claims—in the Treaty of Guadalupe-Hidalgo, by the way, of 1848, full U.S. Sovereignty came about over that area.

Now, to take care of all of the claims that the United States had under this—and they promised to recognize all land claims that had been valid under Spain and then under Mexico—the United States set up in 1854 the Office of the Surveyor General. One of his direct charges was to look into and validate the claims of the Pueblo Indians to the extent used, how they had been used under Spain and under Mexico. That was the charge given to the Surveyor General, the first one taking office there in 1854.

Now, Zuni is unique among the Pueblos of New Mexico in that it didn't get the full treatment that some other Pueblos did and never had a chance to file claims as to the extent and validity of their claim.

Nothing was done. Nothing was done. In all fairness, for a short time there between 1854 and 1868 I would have to say there was some danger going out to the area of Zuni because of Navajo and Apache raids. That threat, certainly for surveying or anything like that, was completely removed by 1868 when the treaty with the Navajos was concluded and they were permitted to return to part of their ancestral homeland, and by 1868 certainly the Apaches had been pretty well contained. This had all come about because as a war measure during the Civil War the U.S. troops under Kit Carson had rounded up many of the Navajos—not all of them—and the Mescalero Apaches and had put them on the Fort Sumner area, the Bosque Redondo, as it is called.

But they, for various reasons, were allowed to return in 1868 and signed that treaty of 1868 with the United States. And the Apaches were contained—we'll put it that way.

Nothing was done. Still nothing done on the Zuni claim, although they tried many, many times during that time. No time limit was set by that statute to set up the Office of Surveyor General, I might say. And nothing was done really to get at it until 1875 when the Zunis were requested by their agent to deposit with the Surveyor General's Office any documents they had regarding their land claim.

Well, what they had was submitted. Actually it resulted in—well, nothing was done, first of all, until July of 1875 when some papers were deposited.

In 1876 I think the most venal person that ever worked with the U.S. Government because Surveyor General of New Mexico. He certified that some papers there were genuine—some papers that his contemporaries knew were spurious—the so-called Cruzate papers that were later proved by internal evidence of the documents, themselves, to be false. These are all in—this came to be case V in the Surveyor General's Office.

At any rate, that resulted in Executive order from Rutherford B. Hayes in 1876 setting aside for the Zuni in total 17,581 acres, in spite of claims to aboriginal land of—my goodness, I don't know how many.

Also, then, there were two other Executive orders by Chester A. Arthur in 1883, and again by him in 1885.

That's the land the Zunis had. They never had any chance to do anything.

Finally, the Office of Surveyor General was abolished by the act of Congress that set up the Court of Private Land Claims. There was a 2-year time limit for filing of claims under that law, whereas there had been none before.

At any rate, that was set up in 1891—the Court of Private Land Claims. Nothing was done for quite some time.

When the agent got around to getting the Zunis to file the claim, the 2-year limit had passed. The Commissioner of the Land Office and the Commissioner of Indian Affairs didn't see any way for there to be any kind of a settlement unless Congress made a special act and so one.

My point is that, to sum it up, the Zunis were treated differently from the other Pueblos of New Mexico in regard to their claim. They just didn't have much of a chance.

Mr. **Boyden**. When we started looking at this situation, the successor judge said that it was unfortunate that the Surveyor General neglected to do his duties. Well, he also was very careful to say that he didn't feel, as a judge, that he could superimpose his judgment in place of Congress in recognizing the title that Congress should have done had the Surveyor General done his duty.

That perked our interest when the courts said he "neglected to do his duty." And so I would like to ask Dr. Floyd A. O'Neil if he would briefly address the question of what the Surveyor General did do in his work of neglect.

The **Chairman**. Dr. O'Neil.

STATEMENT OF FLOYD O'NEIL, SALT LAKE CITY, UT

Mr. O'Neil. Mr. Chairman, thank you.

The Surveyor General's Office operated for 35 years in New Mexico, and in the areas along the Rio Grande there was some good surveying done. However, the surveying of Zuni was never undertaken.

Further, there was widespread fraud and corruption within the Land Office in New Mexico.

Using these corrupt practices, a group of officials— many of them officials of the Federal Government—obtained a great deal of land by fraudulent means for themselves and their relatives, and they did it the following ways: Filing homesteads with fictitious names; and sometimes filing homesteads in the names of their neighbors, and the neighbors would then go to file for a homestead and, of course, their chance had been used up already. They were surprised. When caught this way they would buy the homestead from them.

And so it was a method that people couldn't see in the outside, because while the Federal law requires that you publish the list of homesteads or other land transactions in the newspaper, one of the corrupt officials had interest in several New Mexico newspapers and they would print perhaps three copies only, never let the notice circulate, and that way they were able to prove in the records that it had been advertised when, indeed, it had not.

Many of the 1880's surveys, and particularly one at Zuni, were illegal and immoral—the deliberate drawing of lines on the map that shrunk the size of the Pueblo's lands. That is so famous a case that it is written up in separate documents and books.

This deliberate swindle on attempting to seize that land was done by a vice presidential candidate of the United States, and he was a powerful man named John Logan. Logan, however, got caught because the eastern newspapers found out about it through an anthropologist at Zuni.

It is interesting to see another way they got their phony land settlements established, and that was through the destruction of the records. In the New Mexico land records many of the files were empty.

Max Frost, the registrar of the land for the U.S. Government, became very corrupt. In the south end of the Zuni Reservation, the American Valley Company, which was one of the biggest of the fraudulent groups, is shown outlined in yellow south of the reservation with an area four times the size of the reservation to this one company, alone.

Because of the attempt to seize the villages of Nutria and Pescado by Logan and a group of Army officers at Fort Wingate, it became so notorious that the Senate demanded that there be an investigation, and the Senate report of the investigation is this big. The 400-pages represents the largest land fraud in American history.

The Chairman. When was this report filed?

Mr. O'Neil. This report is dated March 3, 1885.

In it there was broken up in New Mexico what is called the Santa Fe Ring.

Also, Pedro Sanchez, who was the agent for the Zuni Indians, was indicted among those who were guilty of the fraud.

So what we are saying here today is that not only did Zuni get treated differently, but had to fight constantly, even using eastern newspapers to plead their cause in such a way that they were able to cling to some of their lands. More would have been lost had it not been for a reforming press within the United States.

And so even though this has sometimes been called the Age of the Robber Barons, the robber barons were more active and more powerful in New Mexico. Every text in New Mexican history has to include a section called The Santa Fe Ring, as it was known—this huge land fraud system that grew up there.

The CHAIRMAN. This parcel of land upon which the watershed was located I believe is north of the reservation?

Mr. BOYDEN. Northeast.

The CHAIRMAN. Northeast?

Mr. BOYDEN. Correct.

The CHAIRMAN. Who has title to that land? Or who had it in 1890?

Mr. BOYDEN. Mr. Chairman, the land to the north and to the east is checkerboarded because of railroad entries. Part of it is now U.S. forestland and part of it is private land. Many of those entries were made during this time. I would like Mr. Hart to respond more specifically to that.

Mr. HART. There was a good deal of what we would call today "insider trading" of lands and exchanges of lands. The commander of Fort Wingate, E. A. Carr, obtained 40,000 acres—the crucial 40,000 acres of the watershed adjacent to the reservation. He then contracted for beef to the U.S. Army and put cattle on it, sold the timber to timber companies as the railroad came through, and then, after it was denuded, ran hundreds of thousands of sheep over it.

The CHAIRMAN. When was that land designated as a watershed?

Mr. HART. It became a national forest in 1940. There were a number of—

The CHAIRMAN. Up until then they were cutting timber there, weren't they?

Mr. HART. That's right. By that time it was completely denuded. However, an investigator for the General Land Office did look at it in the 1890's and reported that the agent at Zuni said if it was not protected the Zuni Reservation would be damaged, and that it should be set aside at that time. There were consistent reports asking for that setting aside of the land throughout that period.

The CHAIRMAN. During this period between 1890 and 1940, did the Zunis complain about it?

Mr. HART. Yes; they complained bitterly.

The CHAIRMAN. What did the Government do? The Government is the trustee. What did the trustee do?

Mr. HART. The trustee was pretty much impotent in doing anything. It didn't do anything to the watershed. To its credit, I would say—

The CHAIRMAN. Was the trustee aware of the erosion?

Mr. HART. Yes, Mr. Chairman; it was aware of it at the outset in the 1890's.

The **Chairman**. Did the trustee confer with the Zunis before the degradation began?

Mr. **Hart**. The United States was supposed to confer with the Zuni and find out what claims the Zuni had to the lands, and the United States did not undertake that charge adequately. The Zuni's agent did, in their behalf, tell officials in the 1890's at the turn of the century that they must protect that land. And the Zunis continually, over and over again from 1877 through today, have said they need more of their watershed.

The **Chairman**. And this great trustee has always ignored their pleas, is that correct?

Mr. **Hart**. To this point, yes.

The **Chairman**. And so you come before us, the court of last resort, for some relief?

Mr. **Hart**. That is correct, Mr. Chairman.

Mr. **Boyden**. I just want to make sure that it was stated clearly that Congress never acted because of the fraudulent activities of Federal officials who were charged with the duty by Congress to determine the Zuni title. They, for their own reasons, lining their own pockets, did not do their duty. Congress has been shielded, if you will, from acting in this because of the early fraud and misrepresentation.

So at this point we understand that we can't have all the land back that was once ours. It is impractical and impossible since so much of it is now in the hands of third parties.

But one of the things that strikes us as being fair and just is that Congress at this date recognize the lands retroactively, simply for the purpose of giving the tribe the opportunity to receive just compensation for the lands.

The way it is right now, the tribe will be paid for the lands that were taken, but only that amount that they were worth at the time they were taken, without interest. It is our feeling that the least that could be done to remedy the situation is to give what you would give any other landowner, and that is at least interest or just compensation.

The **Chairman**. So the lands that were taken away by fraud, deceit, and corruption are now in the hands of others?

Mr. **Boyden**. That's correct.

The **Chairman**. So they are enjoying the fruits of this crime?

Mr. **Boyden**. That's correct. We have there outlined about 15 million acres. The first thing to happen was the railroad came through and officially filed its claim to the land through a survey in 1872. Then, following 1872, the surveys were made in the 1880's. That is why it was necessary to give the Zuni a very small reservation so as to allow the railroad then to select all of the alternate sections.

The **Chairman**. Then I would think that if you do not prevail in this suit the Government of the United States will be placing the seal of approval upon the corruption and deceit and fraud?

Mr. **Boyden**. That's correct. And we are coming to Congress because we are told by the court that only Congress can make the recognition of the Zuni use and occupation of land as of 1848, which is the date of the treaty of Guadalupe-Hidalgo.

The CHAIRMAN. Governor Lewis, what do you think about the Zuni watershed project that the Department of the Interior spoke about?

Mr. LEWIS. That would refer to what we call Oak Wash Dam. We first started talking about Oak Wash Dam in 1965. That was the time that the Four Corners Commission was in existence. We actually put in a proposal for constructing a dam on Oak Wash in 1968. It was approved in 1975. Still nothing has been done. The Bureau of Indian Affairs has done some diking to prevent water coming down into our community from the north because our neighboring rancher's area is up high and everything is downslope toward the village from that area when we have the flooding season.

As it was mentioned, the original price of the proposed structure was a little over $3 million. By 1996 it will cost triple that. If they wait any longer, the amount of money that will be involved will be tremendous. We feel like that money could be used in helping us to restore our land base if it was possible in that way.

This dragging on and on has absolutely been more of a hindrance to our community than anything that we could hope for in a sooner way.

The CHAIRMAN. In other words, you think that you have waited long enough?

Mr. LEWIS. Yes, sir.

The CHAIRMAN. Without objection, the two amendments submitted by you, Mr. Governor, will be incorporated in the bill as original text and will be so considered in our markup. I assure you that this measure will be marked up this year, and hopefully reported to the full Senate. We'll get some action for you.

Mr. LEWIS. Thank you, Mr. chairman.

The CHAIRMAN. You won your case.

Now we will take up S. 1934, a bill to amend the 1937 U.S. Housing Act.

We have with us Michael Janis, General Deputy Assistant Secretary for Public and Indian Housing of the U.S. Department of Housing and Urban Development.

Before we proceed, I wish to extend to you the regrets of Senator Conrad, the author of this measure. He wanted to be here this afternoon but a matter of some urgency came up and, as a result, he would like to have his statement made part of the record. Without objection, so ordered.

[Prepared statement of Senator Conrad appears in appendix.]

The CHAIRMAN. Mr. Secretary.

STATEMENT OF MICHAEL JANIS, GENERAL DEPUTY ASSISTANT SECRETARY FOR PUBLIC AND INDIAN HOUSING, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, ACCOMPANIED BY DOM NESSI, DIRECTOR, INDIAN HOUSING PROGRAMS, U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Mr. JANIS. Good afternoon, Senator.

It is a pleasure to be with you today. Joining me at the table is HUD's Director of Indian Housing Programs, Dom Nessi.

I have a short statement I would like to read, and then I would be happy to answer any questions.

I am pleased to be with you today to discuss this proposed legislation concerning the payment of fees for certain services provided to Indian housing assisted under the U.S. Housing Act of 1937.

HUD has serious concerns about the provisions of S. 1934 and its potential impact on the Indian housing program. First, the concept of payment in lieu of taxes, known as PILOT, has been a long-standing arrangement with local communities and public and Indian housing authorities which provides for the waiver of property taxes in exchange for the Federal Government's financing of much-needed housing for low-income people.

It is the department's view that the development of low-income housing in a community is an asset to that community's citizenry, and that the community's contribution to its success is a waiver of property taxes.

We believe in maintaining the original intent of Congress in the creation of the public and Indian housing programs, which was to provide for the sharing of costs by local government. The reality is that over the years the Federal Government has borne an increasingly larger share of the development and management costs of public and Indian housing.

PILOT remains a the major area where local government contributes to this valuable housing resource. Any change to this fundamental concept could have a far-reaching financial impact not only on Indian housing, but on the nation's 1.4 million units of public housing.

The department's second concern is that we have no ability to determine the financial and operational impact of S. 1934. There are many communities wholly located on Indian reservations which would be affected. Without extensive research the number may be difficult, if not impossible, to ascertain in advance.

Further complicating an estimation of the impact is the fact that, whereas PILOT is formula driven, using 10 percent of shelter rents, the bill would require housing authorities to estimate property taxes on an annual basis for each of its units.

In closing, let me assure you that the department understands the concerns of the committee and we are sympathetic to the financial problems of small cities. However, we would like to emphasize that any chance to the concept of PILOT could undermine that basic relationship between the Federal Government and local communities upon which the public and Indian housing program has been built.

That concludes my brief opening remarks. I would be happy to answer questions of the committee.

[Prepared statement of Mr. Janis appears in appendix.]

The CHAIRMAN. Thank you very much, Mr. Secretary.

Instead of payments in lieu of taxes, would HUD accept a bill that tied the payment to actual services provided, such as road maintenance, water, sewer services, etc.?

Mr. JANIS. Mr. Senator, we would need to take a look at the effect of that provision and estimate the potential impact before I could give an answer to that question.

The CHAIRMAN. Is it the impact that concerns you or the policy, itself?

Mr. JANIS. Well, it is the policy, itself. I would need to take a look at what the impact would be as part of that policy consideration.

The CHAIRMAN. Does HUD have any obligation to these communities or these towns?

Mr. JANIS. Mr. Chairman, absolutely. In fact, the basis of our objection to the bill as written, and a concern in terms of actual services, would be that the program was created on the basis of having a local contribution to the program when the housing is built. That local contribution has diminished over the years, and the Federal contribution to Indian housing has actually increased in terms of the cost for providing the units that are there.

So any program which would, to me, decrease the local contribution to support the program, I would have some serious concern about.

In terms of the actual services, again, I think the provision of the original intent of Congress and of PILOT was to provide for local support of assisted housing resources.

Mr. Nessi also refreshed my memory that many of the services already—and I believe water services in the community that are being specifically discussed regarding this bill—are paid for by Indian housing authorities. And we do provide for payment of many of these services. Principally I think those are utility service charges.

The CHAIRMAN. When the houses were transferred for Indian use it is suggested that about 30 percent of the tax base was taken away from the community. Should we be concerned with that?

Mr. JANIS. Again, I would go back. When the local community agrees to an Indian housing development they, in essence, agree to provide a support for the Indian housing. One of the ways they provide that support in the cooperation agreement is this acceptance of the payment in lieu of taxes.

The CHAIRMAN. Can you think of any sort of assistance we can provide these towns?

Mr. JANIS. Mr. Chairman, I am—

The CHAIRMAN. What would happen to these towns if we could not afford to make these payments. Are we going to cut off water, sewer, and road maintenance?

Mr. JANIS. Water services are paid for, and I believe sewer services are paid for, also. So I would think that if water and sewer is cut off, that would be patently unfair because those are being paid for by the Indian housing authorities, as any other property owner.

In terms of roadways, my opinion would be the roadway cost you would have to look at the equitability in terms of where the road is and who used it.

Again, I don't think it is fair to cut off water to—

The CHAIRMAN. But we know that the water and sewer fees charged by all municipalities never cover the full cost of the operation, itself. It is made up by taxes on real estate and other bases.

Mr. JANIS. Yes, sir; I think part of the answer is not perhaps to do this on the back of the Indian housing program, but part of the answer is to find appropriate assistance for communities that are in need of help just generally. Again, I cannot speak with assurance specifically about these cases, but we have, in our regional office and in our headquarters office, discussed this issue. I do not have a solution to the issue about the communities not having sufficient moneys.

The **Chairman**. It is the same thing here. We don't want to take any step that would jeopardize your programs and others. So may I ask you to work with the staff of this committee and see if we can come up with something?

Mr. **Janis**. Mr. Chairman, we will do it. I won't say that we are going to give up. We are a little bit—we've exhausted our resources, but we will give it another try. We will go back and look again.

The **Chairman**. I thank you very much, sir.

Mr. **Janis**. Thank you.

The **Chairman**. Our next witness is the director of the Fort Berthold Housing Authority of North Dakota, Ms. Jean Hall.

Would the mayor of the city of New Town, ND, Clare Aubol, and the mayor of the city of Parshall, ND, Wade Williamson, also come forward?

STATEMENT OF JEAN HALL, DIRECTOR, FORT BERTHOLD HOUSING AUTHORITY, NEW TOWN, ND

Ms. **Hall**. Thank you, Senator Inouye.

Mr. Chairman and members of the subcommittee, thank you for the opportunity to provide this testimony to you today.

My name is Jean Hall, and I am the executive director of the Fort Berthold Housing Authority, located on the Fort Berthold Reservation in North Dakota. I am here on behalf of the Three Affiliated Tribes, and I wish to extend my appreciation to the Senate Select Committee on Indian Affairs for this opportunity to provide testimony in support of Senate bill 1934.

Jointly, the tribes, the incorporated cities of New Town and Parshall, and the Fort Berthold Housing Authority have long struggled to resolve the problem of the shortfall in tax dollars to these two communities. Most of the shortfall is attributed to the fact of the Federally tax-exempt status of the properties managed by the Fort, Berthold Housing Authority which are located within the cities.

Presently the Fort Berthold Housing Authority manages 80 rental and mutual-help properties in Parshall and 111 units in New Town. This comprises 20 percent of the taxable residential base in Parshall and 30 percent in New Town. As the housing authority continues to acquire properties, the municipal tax base is further eroded.

With all due respect to the Secretary and HUD, I would like to clarify one of the statements that he made, if I can. One of the statements he made was that any change to this fundamental concept could have a far-reaching financial impact not only on Indian housing but on public housing. Now, I believe it may set a precedent for public housing, but this bill is very specific to Indian housing, and I think we need to remember that.

There are 3,300 public housing authorities in the United States and less than 180 Indian housing authorities. And Indian housing has only about 70,000 units nationwide.

I think the impact with the—I think a study would have to be done in order to determine how many units this would affect. I don't think it is a whole lot.

The Three Affiliated Tribes is proposing the following language to be included in the amendment: "That a permanent and separate Federal appropriation be established for said payments which will not impact other Indian housing allocations."

The Fort Berthold Housing Authority is currently under-funded at 93 percent operating subsidy for 1990 due to Federal cutbacks in the housing program. New construction has been zeroed out by the administration, despite the continuing need for new housing in Indian Country.

Other agencies, such as the Indian Health Service, are even now applying for budgetary increases to better meet the $6.44 million unmet sanitation needs on Fort Berthold Reservation, alone.

In addition, the Bureau of Indian Affairs is also unable to respect its obligation within the Fort Berthold tri-agency agreement, an agreement that provides for Bureau of Indian Affairs assistance in the construction and maintenance of road systems. That line item has been zeroed out of the Bureau of Indian Affairs budget for many years.

Two, "If, in the future, the local governing unit responsible for providing such services reverts to the tribes, that the tribe shall be able to receive said payments in the same manner."

Three, "That the formula to determine the payments be developed with the approval of the Three Affiliated Tribes, and that the formula be reviewed at least biannually."

I think both of these gentlemen will refer to the formula that is presently being used, which is 10 percent of sheltered rent. The formula that is being used right now may have worked when it was initiated years ago, but the formula does not work now. Maybe that is something that the Secretary and HUD could look at—maybe redoing the formula so that the cities would be able to get something. Maybe that could be worked out.

Four, "That the mutual self-help units be included based on the fact that 95-plus percent of these families are within low and very low income ranges."

In conclusion, the situation we are facing is reaching a critical level in terms of its economic and social impact on the entire community which encompasses both Indian and non-Indian. As you are aware, the economy of North Dakota, and particularly of the smaller towns in North Dakota, is desperate. Neither the Tribal Business Council nor the Fort Berthold Housing Authority, through the Department of HUD, has the funds for payments for these services.

You should also be aware the community relations over the years between both the residents of Fort Berthold and the non-Indian community has been very strained at times. We have made strides within the last couple of years to improve understanding and cooperation between our groups. It is with this spirit in mind, on behalf of the tribe, the communities, and our residents, that I urge your support of S. 1934.

[Prepared statement of Ms. Hall appears in appendix.]

The **Chairman**. Thank you very much, Ms. Hall.

If we pass this measure and it becomes law, do you have any idea what it would cost?

Ms. HALL. I don't have any idea. That's something we have all been talking about amongst ourselves. I think a study would have to be done. Like I said, there are only 180 Indian housing authorities in the United States. I don't think it would take very much money to do the study.

The CHAIRMAN. I appreciate this very much.

I now call on the mayor of the city of New Town.

STATEMENT OF CLARE AUBOL, MAYOR, CITY OF NEW TOWN, NEW TOWN, ND

Mayor Aubol. Thank you, Mr. Chairman.

I have submitted testimony. I will summarize that in exchange for the opportunity to insert one additional page in the record, Mr. Chairman.

Mr. Chairman, my name is Clare Howard Aubol, the mayor of the city of New Town, ND. The city of New Town is a unit of general local government located within the exterior boundaries of the Fort Berthold Indian Reservation. The city provides services and maintains facilities for the benefit of those residing in housing provided by the Fort Berthold Housing Authority both within and adjacent to the city.

At the outset, Mr. Chairman, let me say that we recall with fondness and with warmth your visit to our community last year, and we look forward to a return visit as your schedule permits. And let me say also, Mr. Chairman, that at about the time you were visiting our city my sister Lorna was in Hawaii being married to a former resident of your State, Bob Masuo.

The CHAIRMAN. You just made one point.

Mayor Aubol. We greatly appreciate the work of Senator Conrad and Senator Burdick in bringing to this forum the issue of payment for services provided by the city. We thank the committee for inviting our testimony, and we look forward to your favorable consideration of S. 1934.

Mr. Chairman, in 1967 the city entered into a contract for services with the Fort Berthold Housing Authority. The contract required that the city provide certain services to 18 low-rental housing units. In return, the authority would pay to the city a flat $85 per year per unit. That contract continued in effect and payments were made pursuant to that contract until 1979.

In 1979 the city entered into a cooperation agreement with the housing authority, which agreement superseded the 1967 contract. The 1979 agreement envisioned the development of another 82 units of housing within the jurisdiction of the city. The city has provided the services called for in that agreement, but the city has received no payment for services since 1979 except that for some time some return has gone to the fire department for fire protection under a separate arrangement.

The reason for nonpayment, as we understand it, is that the 1979 agreement invoked the concept of a formula whereby payments would be made on the basis of 10 percent of the shelter rents collected by the authority. The problem with that concept is that shelter rent is described in the 1979 agreement as "rents collected after subtracting utility costs." Once utility costs are deducted from the rents collected, there is a negative balance, leaving nothing on which to base a 10 percent payment for services.

The CHAIRMAN. If you did not deduct that, how much would you have received?

Mayor Aubol. Mr. Chairman, we have not received an accounting from the housing office. I have no idea what that would be. I have no idea.

The CHAIRMAN. So you have no idea what you have been deprived of as of this moment?

Mayor Aubol. That's correct, Mr. Chairman.

The CHAIRMAN. But you know that you have been deprived some payment?

Mayor Aubol. We know that from 1967 through 1979 we were paid $85 flat payment per unit.

The CHAIRMAN. And now you get zero?

Mayor Aubol. And now we receive zero.

It is my understanding, Mr. Chairman, that in some cases shelter rent has a different definition. In some agreements I understand that shelter rent is defined as "rents charged" having nothing to do with collection—rents charged, with no reference to utility cost being deducted. But for some reason they say that in our agreement we must follow the definition provided, which is "shelter rents collected after deducting utility costs."

The CHAIRMAN. What is the shelter rent at this time?

Mayor Aubol. Mr. Chairman, I don't know the answer to that. Ms. Hall perhaps does.

Ms. HALL. Sheltered rent is just defined as the rents collected under this agreement minus the utility costs.

The CHAIRMAN. No. Without deducting the utility cost, what would it be?

Ms. HALL. The rents are determined on 30 percent of the adjusted gross income of the tenants that are living in there. That could be anywhere from a negative, where the housing authority pays the tenant, depending on what their income is, to, if they have a good job, $500 a month.

The CHAIRMAN. Is $85 a month adequate, Mr. Mayor?

Mayor Aubol. Mr. Chairman, $85 a month—we would be pleased with $85 a month. The chairman said $85 a month, I believe, is that right?

The CHAIRMAN. No; because you were receiving $85 before 1979.

Mayor Aubol. Per unit, per year, Mr. Chairman. Per year.

The CHAIRMAN. Would that suffice as far as you are concerned?

Mayor Aubol. The figures we are working with now, Mr. Chairman, with the housing authority are based on $12 per unit per month, which is $144 a year on the low rental units. We are working with the housing authority on a basis of $15 a year on the mutual self—

The CHAIRMAN. Would $144 be adequate for you?

Mayor Aubol. At this point yes.

The CHAIRMAN. Please proceed.

Mayor Aubol. Thank you.

So, difficult as it has been, the city has continued to provide services, but major changes within the last 3 years to the city's tax base puts the continued delivery of service in serious jeopardy.

In 1990 the city expects to receive $78,000 in general tax revenue. The services provided by that $78,000 figure will be found in the exhibits attached. Mr. Chairman, those services extend beyond streets and they extend beyond water and sewer. They extend to the library services we provide, the civic center we provide, the parks we provide, et cetera.

More than 25 percent of the property in the city of New Town is exempt from taxation. In 1986 the city had taxable property fully valued at $12.2 million. Today the full taxable value of property in the city stands at $11 million. Nearly all the $1.2 million decrease can be accounted for by property purchased by the housing authority and removed from the tax roll, mostly under the home buyer's program.

But the need for additional housing continues.

Mr. Chairman and members of the committee, good housing deserves good service. Without good service good housing becomes bad housing. No one wants bad housing, Mr. Chairman—not this committee, not the Congress, not the city, not the housing authority, and certainly not those residing in housing units. But service cannot be provided without revenue.

The city's taxing power, as you know, is limited by law in many respects. In many respects it is prohibited by law. The shelter rent formula in our case does not work. The housing authority does not have service funds apart from the shelter rent formula. And those living in low-rent housing are not able themselves to make payment.

We have negotiated and talked about this issue for years, but the dilemma continues. Even as we have sought resolution, revenues have decreased while the number of housing units has increased. This is simply not an issue within the city's power, alone, or within the housing authority's power, alone, or even within the power of those two units together to resolve. It is not an issue that we can settle locally.

The housing program is a Federal program. I believe it is incumbent upon the Federal Government to provide for its programs to the extent necessary. And I agree with the Secretary that local governments have an obligation to help as they can, but we can't bear the burden alone. We clearly need your understanding and your help.

Mr. Chairman, we appreciate the concern of the committee by this consideration of S. 1934 of the 101st Congress.

Can we resolve this dilemma of payment for services? Together with your help and, to borrow a phrase from Senator Conrad who is not here, yes, we can.

Mr. Chairman, this concludes my testimony. We ask for your favorable consideration. I'll be happy to respond to questions of the committee.

[Prepared statement of Mr. Aubol appears in appendix.]

The CHAIRMAN. Thank you, Mr. Mayor.

Is it your contention that whether the house is occupied by a wealthy family or a very poor family they are still receiving your services?

Mayor Aubol. That's correct, Mr. Chairman.

The Chairman. I thank you very much, sir.

I now call on the mayor of the city of Parshall, Wade Williamson.

STATEMENT OF WADE WILLIAMSON, MAYOR, CITY OF PARSHALL, PARSHALL, ND

Mayor Williamson. Thank you, Mr. Chairman.

My name is Wade F. Williamson. I am the mayor of Parshall, ND. I would like to thank you for having the chance to testify. It has been a long day already. We had to leave North Dakota about 2 o'clock this morning. But for us people here, I think it is something we have been waiting for for a couple of years and it is going to mean life or death for these small communities up there, so it is very, very important to us.

You have my printed testimony before you. I'm going to skip over it as you have heard a lot of testimony already today. But I am going to hit a few points in there.

Parshall is comprised of about 1,079 people. We have 73 percent white people and 27 percent native American. A large share of the native American people live in the between 75 and 80 low-income units located within Parshall. They are all operated and taken care of by Fort Berthold Housing Authority, who does a very good job with supplying housing for these people.

Those 80 units are 20 percent of our taxable property base. We also have lots that are owned by Indian people who have other HUD housing in the city that is owned by Montreal County. Altogether it comprises about 35 percent of our tax base we cannot collect any revenue off of.

Also, there continues to be a growing Indian population in the Fort Berthold Reservation. We need more housing units. Fort Berthold is buying pre-existing housing at this time, and also they want to build other housing. We would like to see them build new housing that maintains our taxable valuation and yet brings growth and stimulated business into our community. We really need that. But we can't continue to permit building this new housing if we can't provide the services to these houses. It is kind of like putting the cart before the horse. If we can't provide services we can't allow the building to go on, and we want to see that building.

I don't know if you have my testimony in front of you. One thing I wanted to mention about the city services that HUD alluded too—and I was glad to see the good Senator also mention—these water and sewer are paid for, but it takes a lot more than that to maintain and build and pay off a water system and a sewer system and the streets and street lights and all the other services that go with the city.

I want to say that Parshall doesn't have any luxury services. I think the biggest luxury service that we have is the swimming pool that was built in the 1950's. That's probably our big luxury service.

Most of our services are getting right down to flat, essential services.

But I would like to focus on the following points:

The present system of funding, based on a percentage of collected shelter rent less utilities, is unworkable. Parshall has never received any payment for services from this formula because collected rent in most cases is equal to or less than the utilities.

A different concept of reimbursement for the lost of tax revenue is needed, and S. 1934 addresses these concerns.

It should also be pointed out that this concept of reimbursement is not a new idea. Local school districts, including the one in Parshall, receive Federal impact aid funds for education under Public Law 874.

I do not believe there has been—people have talked about the 1937 Housing Act, but I don't believe that when the legislature envisioned the type of housing developments which would exist on Indian reservations the legislation focused on inner city housing needs and tried to encourage development of public housing by reducing the tax burden. In large communities the percentage of public housing as compared to the overall tax base is quite small and the loss of tax base is more readily absorbed without such detrimental impact.

If it is increasingly difficult for the city and State governments to operate at a level whereby they receive 95 to 100 percent of their tax revenue, how is a city like Parshall or New Town to operate at only 65 to 70 percent?

It is very evident that if our city is to continue to provide services to its residents it must receive some type of reimbursement for its tax loss.

In order to be able to maintain ongoing, quality services the rate of assessment on tax-exempt properties should be equal to other properties of like value.

A question that you had brought up earlier, Senator, was: How much money would this be for Parshall? Based on our evaluation of all our other properties in town, which is $42 a square foot less depreciation and less location, we figured that Parshall would receive about $18,300 a year from all the properties located in Parshall, which isn't a lot. But when you are working on a $55,000 total budget, it is a large share of it and it is going to make the difference of whether you make it or not.

The last thing I would like to mention is that I feel that the Government has the responsibility to assure that services can be provided to housing units built with Federal funds. I think that just makes good business sense.

The other thing I wanted to mention also is that with HUD's testimony I'm really surprised, because we met many times. When these negotiations started out, like Jean mentioned, there were a lot of strained times. People realized the need to work together to try and live together. That is our home and we all want to live there. And it really surprised me when HUD came in and they are not supporting this piece of legislation because at the last meeting I was at in Minot, as I had understood it they were supporting legislation to help correct this problem.

The bill has been here in Washington for 3 or 4 months. As far as checking into it and seeing what the ramifications of it were, I don't know why that hasn't been done.

We really need your help. This is serious. Parshall just celebrated its 75th anniversary. If something isn't done I don't know if the city government can survive to see its 80th birthday. I really don't think it can.

I sure want to thank you for listening. I strayed quite a way from my testimony. I hope you will take time to read that. We really would appreciate your consideration on this piece of legislation.

[Prepared statement of Mr. Williamson appears in appendix.]

The CHAIRMAN. Mayor Aubol, if the Congress does not respond to your request and is unable to give you the relief, what sort of programs in your city would you have to cut down?

Mayor AUBOL. Well, we have already cut, Mr. Chairman. The police force is down from three men to two. We are maintaining the swimming pool on a marginal basis, and it is widely used by the young people of the community. In likelihood that would be one that would go. The continued operation of the civic center in which you visited last year—it is a well-maintained and a nice facility, but that is an area, too, where we just can't afford to operate it. We are operating it right now largely because we have part of it rented out to the Bureau of Indian Affairs for use as their jail facilities, and the continued rental of that unit is in question.

Mr. Chairman, I guess what happens is that when the street sweeper breaks down you don't have money to repair it. When the garbage truck breaks down you can't repair it. Pretty soon you have a town that is not kept, you have a town in which people lose pride in their property, and it, quite frankly, goes to hell.

The CHAIRMAN. Has this had a negative impact upon the relations between Indians and non-Indians in your area?

Mayor AUBOL. It hasn't helped relations, although I think that with the advent of Jean Hall's directorship in the housing authority and her willingness to understand the impact that the community is going through—in the negotiations that we have had in the last 3 or 4 years with Jean as administrator things have improved in that regard. We look forward to some resolution of it. Without some kind of a resolution I don't know what relationships will become. If services were somehow denied to units that are not paying a service fee relationships would be strained and I would hate to see that. We don't like to see those kinds of things. As the Secretary said, that would be unfair in regard to water and sewer since they do pay the water and sewer fee.

But if the city decided in either Parshall or New Town that they would no longer hook up housing units, it does not make for good relations then, and we don't want to see that.

Mr. Chairman, may I just say one thing? The agreement that we entered into in 1979 is a part of the record. The implication when you enter into an agreement—a cooperation agreement—is that it is a two-way street: The city provides services, in return the city receives a fee for those services. When the agreement doesn't work two ways there is something wrong. Either the legislation should be passed to provide payment for those services or the definition of shelter rent should be changed. In that case the dollars are going to have to come out of the Indian housing program someplace. But something doesn't work when an agreement takes from only one side.

The CHAIRMAN. Mayor Williamson, what sort of services would you have to cut?

Mayor Williamson. Mr. Chairman, the first thing that we'd have to cut—and we are talking about it—is the pool. It is used by a large number of the native American children.

The CHAIRMAN. People won't like that.

Mayor Williamson. No; people didn't—the native American people didn't understand what was going on when we were talking about contract for services, payment of taxes. They didn't understand that.

The CHAIRMAN. So the people will blame the Indians?

Mayor Williamson. No; I am not saying that. I'm saying the Indian people had a hard time understanding this until we mentioned that without a tax base we can't continue to provide these services and the pool might have to shut down. The next thing after that is the hall will have to shut down—our rock museum, our library. And then the last things to go would be our water plant and our maintenance people. That would be the essential services that we'd have to keep.

At this point in time—I did miss one thing in my testimony—our streets are in terrible shape. We have paved streets through most of the town. We need to surface those streets again, but we have a hard time finding funds for that. And without the ability to also level special assessments on these properties it makes it increasingly more difficult. So I think that should be taken into consideration, too, if legislation is drafted along these lines.

The CHAIRMAN. Ms. Hall, Mayor Aubol, and Mayor Williamson, I thank you very much. I'll do my best to convince my colleagues to consider this measure with favor.

Thank you.

The hearing is adjourned.

[Whereupon, at 4:05 p.m., the committee was recessed, scheduled to reconvene at the call of the Chair.]

APPENDIX

ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

PREPARED STATEMENT OF HON. PETE V. DOMENICI, U.S. SENATOR FROM NEW MEXICO

Mr. Chairman, Thank you for holding this hearing today on S. 2203, the Zuni Claims Settlement Act. This bill would allow the Zuni Indian Tribe to rehabilitate and reclaim their natural resources that have been damaged, directly and indirectly, by misguided policies of the United States Government.

Mr. Chairman, I also want to thank you and the Ranking Republican Member of the Committee for cosponsoring this bill. You and Senator McCain have both been strong advocates for the Native Americans of our Nation, and I appreciate your support for this effort to assist the Zuni people.

Located 40 miles south of Gallup, Zuni Pueblo encompasses 408,000 acres and is the largest of the 19 pueblos in New Mexico. The Zuni Valley has been occupied continuously from an early period. In 1540, Coronado visited Zuni during his famous search for the "Seven Cities of Cibola" and found a thriving community with a substantial agricultural base.

Since the United States gained sovereignty over New Mexico in 1846, the Zunis have lost 90% of their cultivated land to erosion. In the mid-19th Century, the Zunis were cultivating 10,000 to 12,000 acres of crops using traditional farming methods. Today only 1,370 acres are being cultivated. According to the best available evidence, the erosion of the Zuni's agricultural lands is directly due to the negligence and mismanagement of the United States Government, which led to destructive logging practices on adjoining National Forests, severe livestock overgrazing on the deforested lands, loss of mineral resources, destruction of archaeological sites, and unwise development of dams and reservoirs on and adjacent to reservation land.

The Zuni Claims Settlement Act would establish a $25 million trust fund to remedy these damages. Up to $1.2 million of the trust fund would be used to develop a Zuni Resource Development Plan for watershed rehabilitation, land protection, resource management, and renewable resource development. $8 million could be used to pay off loans and debts of the Zuni Tribe and for legal expenses related to the Zunis effort to obtain compensation for their damaged lands. The interest and investment income of the trust fund would be used to implement the Zuni Resource Development Plan to rehabilitate and reclaim the Zuni's land and to create, using traditional Zuni technology and state-of-the-art scientific methods, a model of sustainable agricultural development.

Mr. Chairman, this legislation is needed to remedy damages to the Zuni Pueblo that resulted from the actions of the United States Goverment. I hope that the Committee will see fit to support it.

United States Department of the Interior

BUREAU OF INDIAN AFFAIRS
WASHINGTON, D.C. 20245

IN REPLY REFER TO:
Water and Land Resources
BCCO 1687

JAN 24 1990

Honorable Pete Domenici
United States Senate
Washington, D.C. 20510

Dear Senator Domenici:

Thank you for your recent letter concerning the proposed Zuni Claims Settlement Act of 1989. I appreciate the opportunity to be of assistance in this matter.

From the information available there is no question that soil erosion is occurring on the Zuni Reservation. The conditions on the Zuni Reservation are the result of a combination of events that have occurred over a long period of time, natural geological erosion, grazing by excess livestock numbers, logging by third parties off the reservation in the head waters of the Zuni River, construction and subsequent failure and repair of Black Rock Dam. All of these events exerted a heavy burden upon the surface resources, soil, water and vegetation, to maintain a proper balance; and all have contributed to the present conditions.

The Zuni Claims Settlement Act of 1989 is one alternative for addressing the soil erosion problem. Whether these provisions will solve the problem and whether it is the best alternative is debatable. The Bill alleges in Sec. 2.(b) that the damages on the Zuni Reservation are due to acts and omissions of the United States in breach of its trust responsibility. Also, in Sec. 2(d) the bill infers that not only is the United States responsible for land erosion, but for loss of timber and minerals, spoliation of archaeological sites and loss of the use of water. Sec. 3(b) states that the compromise settlement is made without a finding of liability; however, the above language specifically implies Federal liability for all damages or losses which have occurred on the Zuni Reservation from time immemorial. The Bureau of Indian Affairs does not feel this type of language adds to the proposed legislation.

Although the proposed legislation is put forth primarily to reduce soil erosion, it also allows for the payment of attorney fees, Sec. 4(c), and all invoices by third parties to the Zuni Tribe, Sec. 4(d). It does not appear that if these costs are legitimate expenses, a Congressional act is required for payment.

Sec. 6, Zuni Resource Development Plan, is a good approach for identifying and developing the necesary activities and training needed to carry out Congressional intent and providing for long term stability of the natural resource base on the Zuni Reservation.

As this legislation is designed for the protection and enhancement of the natural resources with the emphasis on self-determination, self-sufficiency and internal management, one question which Congress may wish to consider relates to future Federal liability of mismanagement by the Zuni Tribe in carrying out the provisions of the legislation and the relationship or need for the Zuni Agency. Technical assistance could be provided by other Federal agencies such as the Soil Conservation Service, or the Intermountain Forestry and Range Experiment Station of the U.S. Forest Service.

Again, thank you for the opportunity to be of service in this matter and if this office can be of future assistance, please do not hesitate to call.

Sincerely,

Patrick A. Hayes

Deputy to the Assistant Secretary -
Indian Affairs (Trust and Economic
Development)

TESTIMONY OF SENATOR JEFF BINGAMAN

Mr. Chairman, I appreciate the opportunity to testify on this important legislation. I regret I can not be present to speak and introduce the leaders of the Zuni Tribe, I am chairman on an Armed Services Subcommittee hearing which conflicts with your hearing.

I feel S. 2203 is important because it is the first step in the restoration of the natural resources on the Zuni Indian Reservation.

As you are aware, the lands of New Mexico are beautiful and contain an abundance of natural resources which are important to the economy of New Mexico. These arid and semi-arid lands can sustain a variety of uses when land conservation is practiced.

The Zuni Indian Reservation is no exception. The Zuni Indians have used their lands for hundreds of years. They used these lands in a manner which would provide for the needs of their people and conserve the land for future generations.

The Zuni methods of farming were developed for the rainfall and soil conditions of their lands. These methods were successful as evidenced by the estimated 12,000 acres which were under cultivation in the mid-1800's. Unfortunately, the mid-1800's also marked changes to the management of the lands on and around the the reservation.

Along with the railroad came people from areas unfamiliar with the fragile Southwestern environment. Forests were overcut, rangelands were overgrazed, and the people of the Zuni Tribe were taught farming techniques which did not sustain farming of previous generations. The effects to the trust lands within the Zuni Indian Reservation were forests which did not grow back, grass and shrub species which no longer grow to protect the soils, and farm lands which were lost due to increased erosion. Today only 1,370 acres are cultivated and erosion continues. Obviously, this damage has occurred, in part, through a breach of the United States trust responsibilities.

The Zuni Claims Settlement Act is intended to reverse these trends. It provides the Zuni Tribe with a $25 million trust fund which will be used to stabilize the soils, plant

Testimony of Senator Jeff Bingaman
S. 2203 Zuni Claims Settlement Act
May 7, 1990

trees, and design grazing management systems to restore the native grasses. This is an opportunity for the Zunis to restore their lands and provide productive lands for future generations.

We know the lands of the Zuni Reservation are productive, and can provide for the needs of the people. However, we must recognize the impacts of past mismanagement encouraged by the United States as trustee and take action to reclaim the lands.

Mr. Chairman, I ask that you and your committee support this legislation and carefully consider the testimony of the leaders of the Zuni Tribe.

OPENING STATEMENT
OF
SENATOR JOHN McCAIN
FOR THE
HEARING ON S. 2203
A BILL TO SETTLE ZUNI LAND CLAIMS

MR. CHAIRMAN:

I AM PLEASED TO JOIN YOU TODAY FOR THIS HEARING ON S. 2203, A BILL TO SETTLE CERTAIN LAND CLAIMS OF THE PUEBLO OF ZUNI.

I WAS DELIGHTED TO JOIN MY DISTINGUISHED COLLEAGUES, SENATORS DOMENICI AND BINGAMAN AS AN ORIGINAL SPONSOR OF THIS BILL. ALTHOUGH MOST OF THE MATTERS ADDRESSED IN THE BILL WILL AFFECT ZUNI LANDS AND RESOURCES IN NEW MEXICO, THE GEOGRAPHIC LOCATION OF THE PUEBLO ON THE ARIZONA-NEW MEXICO STATE LINE AND THE HISTORIC TIES OF THE ZUNI PEOPLE TO MANY OF THE TRIBES IN ARIZONA, MAKE THIS AN IMPORTANT BILL FOR ARIZONA AS WELL AS NEW MEXICO.

AS YOU KNOW, MR. CHAIRMAN, THE ZUNI PEOPLE HAVE ALWAYS ENJOYED A SPECIAL PLACE IN THE HEARTS OF EVERYONE IN THE SOUTHWEST. MY DISTINGUISHED FRIEND, SENATOR GOLDWATER, WORKED VERY CLOSELY WITH THE ZUNI GOVERNMENT TO TRY TO ASSIST

IN RESOLVING SOME OF THESE CLAIMS, PARTICULARLY THOSE RELATING TO LANDS LOCATED IN ARIZONA. I AM PLEASED TO HAVE THIS OPPORTUNITY TO CONTINUE THE WORK BEGUN BY SENATOR GOLDWATER.

I WANT TO EXTEND MY THANKS AND APPRECIATION TO GOVERNOR LEWIS FOR HIS OUTSTANDING LEADERSHIP OVER MANY YEARS. I AM SURE THAT WE WOULD NOT BE HERE TODAY TO TALK ABOUT A NEGOTIATED SETTLEMENT WERE IT NOT FOR HIS COURAGE AND ABILITY.

I HOPE THAT TODAY'S HEARING WILL PROVIDE US WITH THE INFORMATION WE ALL NEED TO MAKE ANY NECESSARY ADJUSTMENTS TO S. 2203 SO THAT WE CAN PROMPTLY REPORT IT TO THE FULL SENATE.

STATEMENT OF PATRICK HAYES, DEPUTY ASSISTANT SECRETARY FOR INDIAN AFFAIRS (TRUST AND ECONOMIC DEVELOPMENT), DEPARTMENT OF THE INTERIOR, BEFORE THE HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, U.S. SENATE, ON S. 2203, A BILL CITED AS THE "ZUNI CLAIMS SETTLEMENT ACT OF 1990".

May 7, 1990

Mr. Chairman and members of the Committee, I am pleased to present the view of the Department of the Interior on S. 2203, the "Zuni Claims Settlement Act of 1990".

We oppose enactment of S. 2203 for the same reasons that we opposed enactment of H.R. 4750 in testimony before the House Committee on Interior and Insular Affairs in July of 1988. The two bills are identical in substance except that in S. 2203, the requested appropriation to fund the settlement trust fund has been raised from $20 million to $25 million.

S. 2203 provides for the cash settlement of two Zuni tribal claims, docket numbers 327-81L and 224-84L, now pending before the United Stated Claim Court. Since these claims are currently in litigation, we defer to the Department of Justice for a discussion of their merits. However, we strongly believe that it is inappropriate to earmark limited Federal resources to solve the problems of one Indian tribe at the expense of other tribes. Existing programs are available to address the needs of the Zuni Tribe. We again strongly encourage the Tribe to pursue funding for its natural resource rehabilitation program through these existing programs.

Section 1 of S. 2203 cites the title of the bill. Section 2 cites congressional findings which include allegations that extensive damage to reservation lands was, and is being caused by, in part, acts and omissions of the United States in breach of its trust responsibilities. It recommends that immediate legislation is needed to remedy this situation.

Section 3 directs the Secretary and the Tribe to jointly formulate a resource development plan for the Zuni Indian Reservation. The plan is to identify and acquire lands necessary for development of the resources on the Zuni Indian Reservation.

Section 4 creates a Zuni Indian Resource Development Trust Fund, making the Secretary of the Interior trustee of the Trust Fund, and authorizing up to $8 million to be used to (1) pay up to $600,000 per year for two years for the formulation of the Zuni resource development plan described in section 3; (2) pay any loans, debts or expenses incurred by the Tribe for the purchase of land, or for obtaining or defending rights of access to the "Zuni Heaven" area described in Public Law 98-408; (3) pay all costs, attorney fees incurred by the Tribe in the prosecution of the docketed civil actions mentioned above; and (4) pay all invoices submitted to the Zuni Indian Tribe for which vouchers have been received prior to September 30, 1990, and approved by the Secretary of the Interior. No funds would be allowed to be used to make per capita payments to the members of the Zuni Tribe.

Section 5 provides that upon deposit into Trust Fund, that all tribal claims raised in docket numbers 327-81L and 224-84L would be considered extinguished. However, no sums paid in settlement of these claims would effect the tribal claims included in docket number 161-79L before the United States Claim Court.

Section 6 authorizes $25 million to be appropriated for the Trust Fund.

We again defer any discussion of the merits of the litigation to the Department of Justice, but would like to discuss the legislation from a programmatic standpoint as we did in testimony given last year on H.R. 4750.

It is inappropriate to focus limited Federal resources designed to serve all Federally recognized Indian tribes to solve the problems of one Indian tribe. We believe that such an outlay would be unfair to other tribes whose budgets would by necessity have to be reduced.

The Bureau of Indian Affairs has existing natural resource programs on the Zuni Indian Reservation such as range management, soil and moisture conservation, forestry, irrigation, and fish, wildlife and parks, which provide for natural resource rehabilitation through the normal Indian Priority System (IPS) budgetary process. We believe the Zuni Tribe should pursue funding for its natural resource rehabilitation program through the existing budget system which already permits the Tribe to evaluate and set its own priorities as envisioned in S. 2203.

In 1968, the Zuni Tribe and the Bureau of Indian Affairs developed a Prototype Planning Model for Reservation Development and in 1970 implemented the Zuni comprehensive Development Plan. In fiscal years 1971 through 1975, funding was provided for erosion control, stockwater development, pinon-juniper and sagebrush control, and for reseeding in the Nutria, Northwest Purchase Jacks Lake, Ojo Caliente and Pia Mesa areas.

Additional funding for natural resource development projects are available from the Department of Agriculture and Health and Human Services, and other Federal and State agencies. In 1975, the Zuni Tribe and the BIA submitted the Zuni Pueblo Watershed Project under Public Law 83-566 (16 U.S.C. 1001 et seq.) to the Department of Agriculture, Soil Conservation Service. The project was approved by Congress on June 15, 1976, at an original estimated cost of $3,645,000. Today, the project, No. NM-2029 is scheduled to begin construction in fiscal year 1996 at an estimated cost of $11,700,000.

As we stated in earlier testimony, we would recommend, should the Tribe desire to proceed in securing funding through the existing funding processes, that they prioritize their request as follows:

(1) update the 1971-1975 Zuni Comprehensive Development Plan through a watershed resource investigation to inventory and identify the current condition of the renewable natural resources and the methodology for developing and sustaining these resources,

(2) complete the Indian Integrated Resources Information Program data base (GIS),

(3) initiate an Integrated Resource Management planning effort to identify areas for rehabilitation and cost estimates,

(4) design a rehabilitation plan, if the results of priority 3 above indicate that such rehabilitation is required,

(5) develop a cooperative adult and youth training program to improve their capabilities in the management of farming and ranching operations; and

(6) initiate a plan for cooperative resource conservation and management with private, state and federal entities to provide technical assistance in carrying out the resource management program.

This concludes my prepared statement. I will be happy to answer any questions the committee may have.

STATEMENT OF MYLES E. FLINT, DEPUTY ASSISTANT ATTORNEY GENERAL, DEPARTMENT OF JUSTICE, BEFORE THE HEARING OF THE SENATE SELECT COMMITTEE ON INDIAN AFFAIRS, CONCERNING S. 2203, THE ZUNI CLAIMS SETTLEMENT ACT OF 1990

MAY 7, 1990

Mr. Chairman and Members of the Committee:

On behalf of the Department of Justice, I am pleased to have this opportunity to present our views on S. 2203, a bill to provide for a settlement fund for restoration of certain lands on the Zuni Indian Reservation. The Justice Department opposes passage of this bill for the same reasons that we opposed passage of an almost identical bill, H.R. 4750, in 1988. I would like to focus my comments today on Section 5 of the bill, the primary source of our objection.

Section 5(a) of S. 2203 provides for the extinguishment of the Zunis' claims in civil actions number 327-81L and 224-84L, which are consolidated under the title Zuni Tribe of New Mexico v. United States, and are currently before the United States Claims Court. Section 5(b) provides that settlement is made without a finding of liability on the part of the United States. Section 5(d) provides that funds appropriated under the bill may not offset any recovery in Docket 161-79L, now pending in the Claims Court.

Since these cases are currently in litigation, I am limited in what I can say concerning the details of the Government's substantive position. I can say, however, that to the extent that the funds appropriated under S. 2203 are intended as a legislative compromise of the claims raised in the litigation, the Administration opposes the legislation. At the current stage of the litigation, which is nearing trial, we believe even more strongly than we did at the time of our prior testimony that such compensation is legally unwarranted. Further, this bill would disrupt an orderly process already well underway, and would be unfair to other Indian Tribes who have had to litigate, and to prevail -- prove by a preponderance of the evidence -- similar claims against the Government.

Case No. 327-81L was filed in 1981 pursuant to a special jurisdictional act passed for the Zuni Tribe in 1978. At that point, the Zuni Tribe had missed the statutory deadline for filing pre-1946 claims against the Government, and had sought special relief so that it could have its "day in court." Although the prior Administration specifically opposed making a special exception for the Zuni Tribe in 1978, the legislation did pass, granting the Zuni Tribe an opportunity to present in court its pre-1946 land claims against the United States. Now, after gaining access to the courts to have their claims determined according to a rule of law, the Tribe seeks to cut short the litigative process and obtain compensation without proving any legal entitlement to it.

The complaint in 327-81L, which was amended in 1984, alleges that, prior to 1946, the United States caused irreparable damage to the Zuni Reservation or allowed others to cause such damage. The complaint also alleges that the United States appropriated natural resources from the Reservation for its own use. In its pleadings, the United States has denied that it was responsible for any damage to the Reservation or that it appropriated Reservation resources for its own use.

The Complaint in No. 224-84L was filed in 1984 pursuant to 28 U.S.C. §§ 1491 and 1505. The allegations of this complaint are similar to those raised in No. 327-81L, but pertain only to the period beginning in 1978. As with the allegations raised in 327-81L, the United States in its pleadings denied responsibility for any damage. The complaint also sought damages in connection with 1978 legislation authorizing the acquisition of certain lands in New Mexico to be held in trust for the Zuni Tribe. Acquisition of these lands was completed in 1985.

Considerable progress has been made on these cases in the Claims Court. Because the cases involve complex and technical issues, the Court asked both the Tribe and the United States to prepare expert reports for use at trial. The Zuni Tribe and Government have now prepared and exchanged original expert reports, as well as rebuttal reports, and are scheduled to submit surrebuttal reports late this summer. Following submission of the surrebuttal reports, and possibly a small amount of additional discovery, the parties will be ready to begin preparation for trial. In sum, the vast majority of trial foundation has been laid, with trial likely in the relatively near future.

Although the Department of Justice actively supports legislative settlement of litigation in appropriate circumstances, we do not think that those circumstances exist here. The Government's experts have generally concluded that the United States is not responsible for the erosion on the Zuni Reservation. For example, our experts have found that the erosion complained of is a naturally occurring type common in the Southwest, and is not due to acts or omissions of the United States. Further, much of the erosion on the Zuni Reservation appears to have occurred prior to the time of the Government involvement in Zuni affairs.

Accordingly, to the extent that S. 2203 is premised on the assumption that the Government is at fault, we believe it is unjustified. In these times of budget restraint, the American taxpayer should not be asked to spend $25,000,000 to settle litigation in the absence of such justification. And, even if the Government were to be found liable for some damage on the reservation, we know of no basis for fixing the Government's liability at $25,000,000.

I also wish to address section 5(d) of S. 2203, which provides that the sum appropriated under this legislation could not offset any recovery under Docket 161-79L, also entitled Zuni Tribe of New Mexico v. United States. This case, filed pursuant to the 1978 special jurisdictional act, involves the Tribe's claim against the United States for the taking of aboriginal lands. The special jurisdictional act did not make an exception for the Zuni Tribe from the provisions of 25 U.S.C. § 475a, which require that any Claims Court recovery by an Indian tribe or band must be offset by certain gratuitous expenditures by the United States. Since we believe the United States is not liable for the damage alleged in the mismanagement claims (327-81L and 224-84L), and since the legislation provides for payments unrelated to the litigation, we believe that the proposed $25 million payment to the Tribe would be a gratuity to the Tribe and should be available for consideration by the court under the developed law as an offset to any recovery in Docket 161-79L.

Finally, it is no doubt clear from what I've said in my testimony to this point that we also disagree with several of the congressional findings included in section 2 of S. 2203.

Sections 2 (2) and 2 (4) involve findings of extensive damages to the Zuni Reservation. As I have stated, we have in the past and continue now to deny such conclusions. We believe the evidentiary record we are presently developing for presentation to the Claims Court will refute such allegations.

We also object to the findings set forth in Section 2 (2), 2 (3), 2 (4) and arguably, 2 (5) of S. 2203. These sections involve the determination of factual issues that Congress has specifically conferred jurisdiction upon the United States Claims Court to resolve. The issues are complex and have required and will require extensive expert analysis to develop a complete record upon which a reasoned determination can be reached. Neither Congress nor the court has yet before it all of that record.

I also note that section 2 (3), in a addition to being incorrect, is not consistent with section 5 (b). As recognized by implication in section 5 (d), any sums paid pursuant to this bill would be gratuitous absent a determination of liability on the part of the United States. Section 5 (b) recognizes that this legislation would authorize payment to the Zuni without a finding of liability. Section 2 (3) inconsistently makes such a finding of partial responsibility on the part of the United States for the alleged damages.

Sections 3 and 4 of the bill provide for establishment and use of the Development Trust Fund. These provisions involve program or policy considerations, and we therefore defer to the Department of the Interior on them. This concludes my prepared testimony for today's hearing. I would be happy to answer any questions the Committee might have.

PUEBLO OF ZUNI
P. O. BOX 339
ZUNI, NEW MEXICO 87327

ROBERT E. LEWIS
Governor
PESANCIO LASILOO
Lt. Governor
BARTON MARTZA
Hd. Councilman
EDWARD BEYUKA
Councilman

VIRGIL WYACO, SR.
Councilman
ANGUS MAHOOTY
Councilman
RITA ENOTE LORENZO
Councilwoman
WILLIAM TSIKEWA, SR.
Councilman

In reply refer to:

505-782-4481

STATEMENT OF ROBERT E. LEWIS
GOVERNOR
OF THE PUEBLO OF ZUNI
TO THE
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
WASHINGTON, D.C.
MAY 7, 1990

Mr. Chairman:

I thank you for the opportunity to allow the Zuni Indian Tribe to appear before you this afternoon. I submit this written statement on behalf of the Zuni Indian Tribe in support of the proposed settlement of two lawsuits known as Zuni Indian Tribe v. United States, Docket Numbers 327-81L and 224-84L pending before the U.S. Claims Court. These two lawsuits were instituted by the Tribe to recover money damages for acts and omissions of the United States resulting in the loss of timber, coal, water and salt from our trust lands as well as the loss of our best agricultural lands.

As you may know I have been involved in Zuni government for many years and have been elected and served as Governor for several terms. I am old enough to remember the early 1920's and can testify from personal experience about how our reservation farmlands have been ravaged by erosion, and how dams supposedly built to assist agriculture have all failed, silted-in and caused deep arroyos instead of delivering water to the fields. The Bureau of Indian Affairs acting as our trustee, mismanaged our lands and introduced new and different farming and irrigation practices which were unproductive and harmful.

The Zuni people managed the same lands for hundreds of years using traditional methods which were productive, and protected the lands from the terrible erosion we see today. We were told by the B.I.A. to stop our old ways and start using steel plows drawn by horses, or modern tractors. They said all of our children must attend the B.I.A. school and learn how to farm, instead of allowing us to use our old way of spreading the water with brush dams and small dikes or diversions. The B.I.A. built big earthen dams which covered good farmland with water, and then tons of silt.

The United States allowed our watersheds to be totally stripped of trees to build the railroad. Non-Indian livestock overgrazed our mountains and now when it rains the runoff washed big gullies down the slopes and across our valleys. Our reservation lands were ruined by these practices which were not of our doing, but imposed upon us by the United States. We should be repaid for the damage suffered by our lands. Better yet, the lands should be restored.

We Zuni people want to see our Mother Earth properly cared for and carefully brought back to good health. We are willing to spend our time and effort to see her healed and made whole. Unfortunately, lawsuits take too much time and we do not wish to see the gullies grow deeper and wider as the litigation drags on and on. We realize that our time here on earth is really very short as we think of all the past generations of our elders who have gone before us. When our life's journey is through, we do not want it said of us that we were the generation that shamed and abused Mother Earth.

I spoke two years ago with Mr. John Gray, our previous Superintendent of the Zuni Agency, about my feelings to settle the lawsuit now so that we could get about the business of land

STATEMENT OF ROBERT E. LEWIS
Page Three (3)

restoration. He agreed we should settle the lawsuit and recommended that we work as partners to see that the job was done right. I called our attorneys and they said that they would do all they could to see that our wishes were carried out. We talked with the Albuquerque Area Office of the B.I.A. and they supported us and encouraged us to try for a settlement.

After talking with our experts we figured that the damages would amount to about 50 Million Dollars if we were successful in the lawsuit, so we agreed with the Agency and Area Office of the B.I.A. that Twenty-Five Million would be fair settlement. We then spoke with the New Mexico Congressional Delegation about the settlement and they had lots of questions for us to answer as to why a settlement was needed, why it was fair, and why it was better than continuing with the litigation.

We spent lots of time working with our Senators and Congressmen and sincerely appreciate their advice and support for the settlement. Their staff worked with us and gave us good suggestions as to how to put together a plan of partnership with the B.I.A. where our money is placed in a Trust Fund and we use the interest to pay, for our people to work in the watersheds, reseeding, planting trees, and building check dams. The B.I.A. can help train our people for technical jobs too, and provide us with expertise, material and equipment. I can see a day when Zuni people working with the B.I.A. can set an example for the world to see how we turned around a bad situation and returned Mother Earth to her original beautiful condition.

The Tribal Council has passed a resolution supporting S.2203, and each Councilman has submitted a statement of support. Further, we are submitting the statements of two past governors, Edison Laselute and Chauncey Simplicio, giving their support to S.2203.

I think it is fair to say that the Zuni people approve of the settlement as it has been explained to them in a public meeting and aired on cable television many times. We are anxious to get about the work of land restoration and bring pride back into our community for the efforts we are making to heal the wounds of erosion.

We would like to make two amendments to S.2203 which deal with two other matters which need legislative attention. The first is the following amendment concerning the Zuni Heaven:

> SECTION 7. The Act of August 18, 1984 (Public Law 98-408; 98 Stat. 1533) is hereby amended to include Sections 13 and 23 township 14 north, range 26 east, Gila and Salt River meridian in the description of Section 1 of said act. The Secretary of the Interior is authorized and directed to acquire said Sections 13 and 23 through exchange with the private landowner pursuant to the provisions of Section 2 of said act.

The amendment will allow two sections of land to be added to the Zuni Heaven area which were inadvertently left out when the original description was made. The property belongs to Mr. Leonard Isaacson of St. Johns, Arizona. We have discussed the matter with him, and he would like to trade his land for two other sections located near there. These sections should have been included in the original act of August 28, 1984, Public Law 98-408, but when we were in the field with the Senate staff members, our maps were not clear enough to be interpreted by the Zuni religious leaders, and we made a mistake. Section 13 contains access to the South Mountain and is the place where our people get their clay for painting. Section 23 is the place used by my people as the camping ground for the pilgrims.

The second amendment has to do with our aboriginal lawsuit. The amendment language is as follows:

SECTION 8. Title to lands of the Zuni Indian Tribe described in Finding No. 88, in the Decision of the United States Claims Court filed May 27, 1987 in Docket No. 161-79L is hereby recognized for the permanent use and occupation of the Zuni Indian Tribe effective July 4, 1848 for the limited purpose of providing just compensation to the Zuni Indian Tribe under the Fifth Amendment to the United States Constitution for the taking of said lands by act or omissions of the United States.

This amendment will correct a substantial injustice to the Zuni Indian Tribe. We were successful in our lawsuit in the United States Claims court for the taking of the lands which we used and occupied as of 1846. The Court rendered a decision in favor of the Tribe, describing the area used and occupied, finding liability on the part of the United States for the taking of those lands, and determining the specific dates of taking of those lands. Unfortunately, our lands were not recognized by Congress, because of the fraud and misrepresentation of United States officials.

We are asking that official recognition be made of our aboriginal land effective July 4, 1848, which is the effective date of the Treaty of Guadalupe Hildago. We are asking for this recognition for the sole purpose of allowing us to receive just compensation for these lands under the Fifth Amendment of the United States Constitution which means that we can get interest from the date of taking. If the Surveyor General had done his job as commissioned by Congress, our land would have been recognized. As it is now, without making a recognition, the United States will profit from the fraud and misrepresentation of its own officials who deliberately kept the Tribe from receiving recognized title in a timely fashion. We have asked our experts to explain exactly how the Zunis were defrauded.

I thank you for letting us appear before you today. A special thanks goes to your staff for being so accommodating in arranging this hearing date. I would also like to thank the Chairman and Senators Domenici, Bingaman, and McCain for sponsoring S.2203. If you have any questions, we would be pleased to answer them.

STATEMENT OF STEPHEN G. BOYDEN
ATTORNEY FOR THE ZUNI INDIAN TRIBE

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

May 7, 1990

Mr. Chairman: The purposes of my remarks today are to give a brief history of the litigation involving Docket Nos. 327-81L and 224-84L now pending before the United States Claims Court and to give a section by section analysis of S. 2203 which is now under consideration by this Committee.

The above-referenced cases were filed in 1981 and 1984 respectively. The two dockets are often referred to by us as the "Zuni II" lawsuit to distinguish them from the aboriginal lands lawsuit, Docket 161-79L, which we refer to as "Zuni I." The Zuni II Docket No. 327-81L was filed pursuant to a special 1978 jurisdictional act. That lawsuit was challenged in motions to dismiss by the Department of Justice representing the defendant United States. The trial court certified the motion to dismiss to the Appellate Division of the Claims Court, and that Court held that under the special jurisdictional act the Zuni Indian Tribe was entitled to recover damages for loss of reservation resources caused by acts and omissions of the United States prior to 1946. After successfully withstanding the initial, jurisdictional challenge, the case proceeded through the normal pretrial activities. The Zuni Tribe filed a second lawsuit in Zuni II which covered the period subsequent to 1946 under authority given by the United States Supreme Court in Mitchell v. United States, to file pursuant to the Indian Tucker Act. Again, the court denied the United States motion to dismiss and both cases were consolidated as the present Zuni II under Docket No. 327-81L.

The litigation then proceeded normally, including the production of reports to the Court from experts retained by the plaintiff Zuni Indian Tribe. These reports were extensive and represented many scientific and historical disciplines in order to prove acts and omissions of the United States, causation and actual damages to trust lands and natural resources of the Zuni Reservation. Experts retained by defendant United States then filed reports answering the allegations and conclusions of the plaintiff's experts. Rebuttal reports were then submitted by plaintiff's experts. The defendant then asked permission to file surrebuttal reports which now are being prepared by experts for the defendant. Extensive depositions have been taken by both sides which is no small task, since nearly twenty experts are involved.

If things go smoothly, the consolidated cases should be ready for trial within one year after the submission of defendant's surrebuttal reports which are due later this fall. Undoubtedly, there would be extensive post-trial briefing. The experience the Tribe has already had in its aboriginal lands lawsuit would indicate that a decision no sooner than five years after trial would not be out of the ordinary. Because of the magnitude of the cases, we would expect a vigorous appeal from the side which does not prevail at trial. It is very difficult to predict the duration of the appellate process, but it, too, would take several years.

In essence, the cases seek monetary compensation for damage to reservation trust lands and for unauthorized removal from the reservation of large quantities of coal, timber, water, salt and other minerals by officials of defendant United States. The court of Claims only has jurisdiction to award monetary compensation and cannot require any specific acts of the parties, nor can it require the transfer of lands. As the lawsuit proceeded, community awareness was increased concerning one of the major points of the lawsuit-- erosional damage to trust lands caused by dam building, clear-cutting of the forests and overgrazing in the watershed of the Zuni River and its tributaries. The Tribal Council and the Bureau of Indian Affairs received a tremendous amount of pressure to do something immediately to prevent further degradation of the land and its natural resources. To make matters worse, the Blackrock Dam, just above the Pueblo of Zuni in the middle of the Reservation was written up as the most hazardous dam presently built and administered by the Bureau of Indian Affairs. To top it all off, the drinking water on the Reservation is unclean and unsafe because of contamination from the sewer system from too shallow wells.

Discussions are underway with the Indian Health Service regarding polluted drinking water and a defective sewer system at the Pueblo of Zuni, but there are no claims being asserted in either of the above-mentioned cases regarding drinking water or sewer problems. Also, S. 2203 does not address drinking water or sewer problems. I mention this distinction relative to drinking water so that the record will be clear as to the limited scope of S. 2203.

Impetus for requesting Congressional action originated with the Zuni Tribal Government. Governor Lewis is an experienced administrator. He is well-aware that completion of large-scale litigation necessarily takes substantial time. He was troubled by the fact that the conditions favoring erosion of farm land remained uncorrected while litigation continued at its normal, grinding pace. Responding to the outcry from the community, he consulted with the then Superintendent of the Zuni Agency of the BIA, John Gray. After much discussion, they decided to approach the Albuquerque Area office about the possibility of recommending Congressional action as a more expeditious alternative to litigation so that action to stop the erosion process and to restore the damaged land could be taken at the earliest possible time. They received a favorable response from the Area Director, Mr. Sid Mills. When they approached me about a Congressionally-mandated settlement, I agreed that legislation could be tailored to provide a more effective remedy than the award of money damages being sought in litigation.

We then considered what would be fair in terms of a monetary settlement and approaced the central office of the Bureau of Indian Affairs and the New Mexico

Congressional Delegation about the details of the settlement. We thank them for their very constructive suggestions. The real strength of S. 2203 lies in the process used to reach a final settlement. The parties essentially worked it out in the field without their attorneys, then received sage counsel from their elected Senators and Congressman before proceeding to draft the technicalities. Many well-intentioned settlements never survive technical drafting because they are not well thought out in advance. I personally thank Governor Lewis and Superintendent Gray for their foresight and thoroughness which made the process so effective.

SECTION BY SECTION ANALYSIS

SECTION 1: The short title is Zuni Claims Settlement Act of 1990.

SECTION 2: Congressional findings reiterate the applicable federal polices which are involved in the settlement of the pending litigation and summarize the factual background upon which the settlement is based including the notion that further litigation will only delay a cooperative effort of the parties to begin and extensive land rehabilitation project.

SECTION 3: The Zuni Resource Development Plan is outlined. The Plan will be formulated pursuant to that outline by the Zuni Tribe and the Department of the Interior within three years. The Plan emphasizes the cooperative effort of both parties in planning and implementation. The specifications for the plan are comprehensive and include development of metnodology for the sustained development of renewabe resources, a methodology for training and education to enable Zunis to staff profressional positions and a labor force to implement the plan. This plan will enable the organize and effective use of funds for maximum benefit to reservat;ion lands and resources.

SECTION 4: Provides that all money paid under Section 6, after appropriate deduction of litigation expenses, fees and other tribal debt in a total amount not to exceed $8,000,000, shall be transferred by the Secretary into a separate trust fund established for the benefit of the Zuni Indian Tribe that shall be known as the Zuni Indian Resource Development Trust Fund. The Secretary shall administer the fund. The corpus cannot be expended, but the interest that accrues may be expended in accordance with Zuni Resource Development Plan described in Section 3. This arrangement insures that the settlement funds will not be spent for purposes other than the protection and restoration of natural resources on the Zuni Reservation. The trust fund provides a legacy, in perpetuity, to future generations of Zuni tribal members for the continuing protection and restoration of reservation natural resources. Two payments from the Trust Fund are authorized in the annual amount of $600,000 to facilitate the formulation of the Zuni Resource Development Plan required by Section 3. The provisions of this section represent the forward-thinking and responsible action on the part of both the Zuni tribal leaders and the Department of the Interior.

SECTION 5: Authorizes total settlement of lawsuits, but specifies that this settlement is being made without a finding of liability on the part of the United States. Upon payment of the settlement amount, the Zuni Indian Tribe shall move to dismiss in the United States Claims Court the two civil actions relating to damage to reservation lands (Zuni II: Docket Nos. 327-81L and 224-84L). Any payment made under authority of this act shall not be offset against any award of judgment against the United States in Docket No. 161-79L (Zuni I).

SECTION 6: Authorizes payment of a settlement amount of $25,000,000 to the Secretary of the Interior for the benefit of the Zuni Indian Tribe.

The Tribe is requesting that the Committee adopt two well-documented amendments to S. 2203 which are hereby explained:

Amendment offered as Section 7:

SECTION 7. The Act of August 28, 1984 (Public Law 98-408; 98 Stat. 1533) is hereby amended to include Sections 13 and 23, township 14 north, range 26 east, Gila and Salt River meridian in the description of Section 1 of said act. The Secretary of the Interior is authorized and directed to acquire said Sections 13 and 23 in trust for the Zuni Indian Tribe through exchange with the private landowner pursuant to the provisions of Section 2 of said act.

Analysis: This amendment corrects an error which was made in the description of lands to be acquired in trust for the Zuni Indian Tribe in Public Law 98-408. Section 13 is vital to the Zunis' access to a mountainous portion of Zuni Heaven and Section 23 embraces a large campsite used by Zuni religious pilgrims. The landowner is willing to exchange these sections for other sections of comparable value.

Amendment offered as Section 8:

SECTION 8. Title to lands of the Zuni Indian Tribe described in Finding No. 88 in the Decision of the United States Claims Court filed May 27, 1987 in Docket No. 161-79L is hereby recognized for the permanent use and occupation of the Zuni Indian Tribe effective July 4, 1848 for the limited purpose of providing just compensation to the Zuni Indian Tribe under the Fifth Amendment to the United States Constitution for the taking of said lands by acts or omissions of the United States.

Analysis: This amendment is being offered to correct a problem which the Zunis encountered in their efforts to obtain just compensation under the Fifth

Amendment to the United States Constitution in the claim which they asserted in the United States Claims Court (Docket No. 161-79L) for the taking of their aboriginal land by acts and omissions of the United States.

The U.S. Claims Court found in companion Decisions filed May 27, 1987 that the Zuni Indian Tribe had title to their aboriginal homeland recognized by the governments of Mexico and Spain and that, by virtue of the treaty of Gualdalupe Hidalgo, the Zunis became subject to the sovereignty of the United States with title to their homeland intact. A successor judge, who was assigned to the case after the judge who conducted the trial left the bench, ruled that the Zunis needed one more thing to perfect their right to just compensation under the Fifth Amendment. They needed some formal act of Congress recognizing their title. The trial court had held that the United States Surveyor General for the Territory of New Mexico had neglected his duty to recommend boundaries for Zuni tribal lands, thereby precluding formal recognition by Congress. The successor judge said that he believed the inability of the Zunis to recover just compensation "to be unfortunate," especially in view of the trial court's finding of neglect. The successor judge, who is a former member of Congress, felt that he could not substitute his judgment for that of the Congress on a matter of national policy. He felt that the issue of recognition of title was within the prerogative of Congress and not of the judiciary. The Zunis have viewed these comments in the judge's decision as an implied invitation to seek Congressional help.

In preparation for the Tribe's request for Congressional help, the historians retained by the Tribe found abundant evidence that the Surveyor General "neglected" his duty because he was involved in a series of fraudulent land transactions involving tracts of land in the Zuni aboriginal territory through which he hoped to amass a large fortune. The Pueblo Indian Agent was also involved in the scheme. This history will be presented in detail during the hearing on S. 2203. The Zunis' position is that the United States should not benefit from the fraud and other illegal conduct of its employees who were responsible to protect the interest of the Tribe.

The wording of the offered amendment confers recognized title upon the Zunis to the tract of land which the U.S. Claims Court found to be exclusively used and occupied by the Zunis at the time they became subject to the sovereignty of the United States. This action will entitle the Tribe to receive just compensation under the Fifth Amendment. It is a consummation of the formal Congressional action which the court said was missing.

The phrase "...for the limited purpose of providing just compensation to the Zuni Indian Tribe..." is intended to resolve concerns that the Zunis might try to recover title to their lost aboriginal lands rather than accept compensation for the takings which the court found. This phrase is seen as limiting the Zunis' right to one of compensation and not of recovery of title.

THE INSTITUTE OF THE NORTHAMERICAN WEST
110 Cherry Street, Suite 202
Seattle, Washington 98104
206/623-9597

STATEMENT OF E. RICHARD HART

Executive Director, Institute of the NorthAmerican West

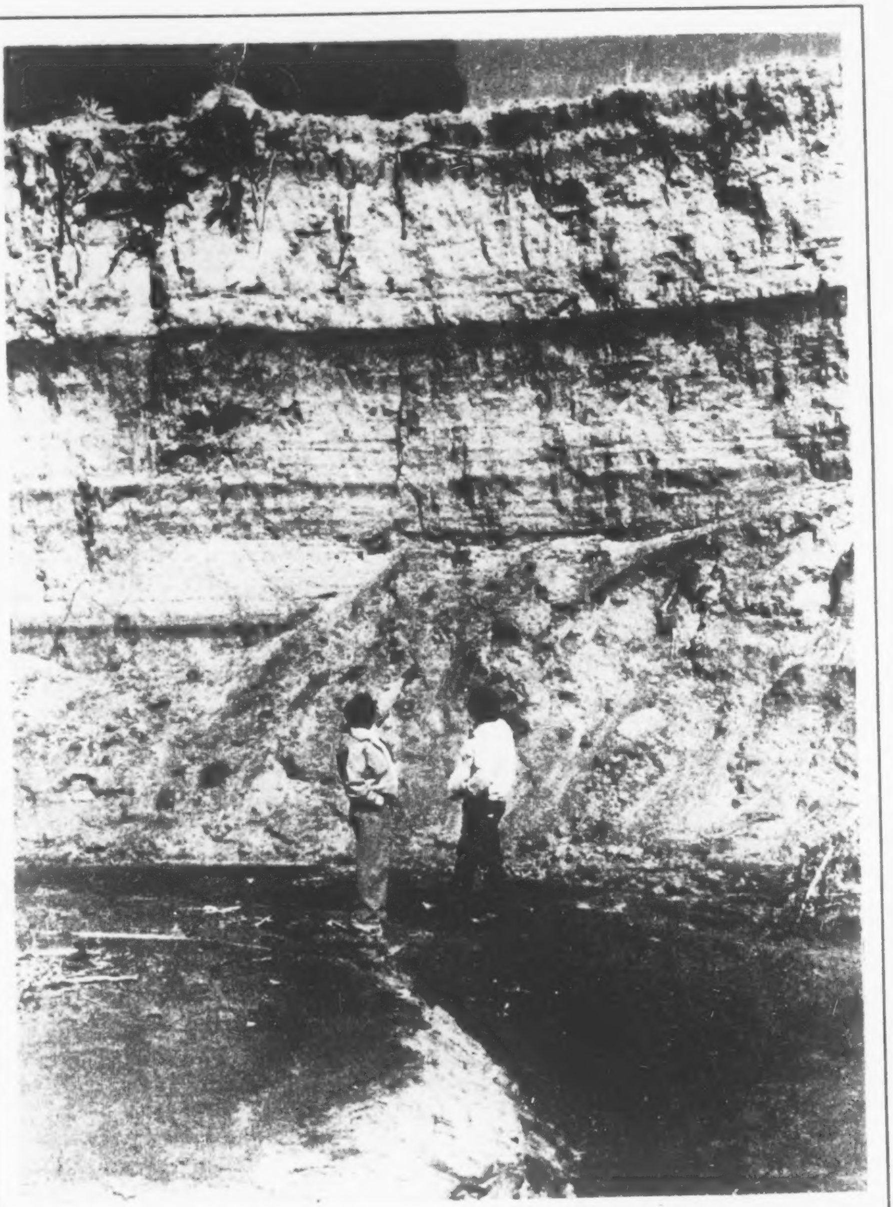
Select Committee on Indian Affairs

United States Senate

S. 2203

May 7, 1990

A non-profit educational corporation organized in 1984 in the State of Washington, conducting research, publication and educational programs to improve the mutual understanding of issues of transboundary significance to Canada, Mexico and the United States.



Governor Robert E. Lewis and Head Councilman Barton Martza examine erosion in Bosson Wash on the Zuni Reservation. Erosion was caused by denudation of the upper watershed, improper construction of dams, and overgrazing (February, 1990).

Mr. Chairman: It is an honor to appear before the Senate Select Committee on Indian Affairs, to provide, at the request of the Zuni Tribe and the Zuni Agency of the Bureau of Indian Affairs, a statement on S. 2203, "To settle certain claims of the Zuni Indian Tribe, and for other purposes." In both my capacity as Executive Director of the Institute of the NorthAmerican West, and with my twenty-year-long relationship with the Zuni Tribe as an historian and ethnohistorian, I have a clear perspective on the events that led to this legislation and to its potential impact on the Zuni Tribe and the relevant environment in that portion of New Mexico.

I. DAMAGE TO ZUNI TRUST LANDS

1. Erosion

In 1846 when the United States first expressed sovereignty over the 15.2 million acre Zuni aboriginal territory (Figure 1), the Zuni Tribe was the wealthiest and most secure political force in that region of the Southwest. The core of their traditional lands was the Zuni River watershed, with headwaters in the heavily wooded Zuni Mountains, and whose mouth emptied into the Little Colorado River in what is now Arizona. U. S. officials quickly noticed the wealth of timber in the Zuni Mountains, the beautiful mountain pastures with three to four foot high grass, and the thousands upon thousands of acres of agricultural lands cultivated by the Zuni Indians. During the next thirty-five years many travelers marvelled at the quality of the Zuni landscape--its timber, its water, its grass, and its cultivated lands.

But although the Zuni Tribe immediately allied with the United States in the mid-19th century, never fought a single battle against U. S. troops, and in fact have fought alongside our troops in our nation's conflicts ever since, gradually, under U. S. rule the Zunis' traditional territory was reduced to less than 3% of its original size (Figure 1), and the small portion of the territory that remained in trust status became seriously damaged by erosion.

In the mid-19th century the Zunis were cultivating between 10,000 and 12,000 acres of crops, (Figures 2, 3, 4 and 5) enough to harvest sufficient corn to help support United States military posts in the region, including one, Fort Wingate, that was established just a few miles to the northeast of the Zuni farming village of Nutria. The Zunis' thousands of sheep grazed over grasslands within a two million acre area. Their salt from the Zuni Salt Lake had been famous for centuries, and provided another important unit of trade.

Between 1846 and 1876, as the United States used every means to encourage non-Indian settlement of the West, the Zunis lost control of some 9,000,000 acres of territory (Figure 6). Fort Wingate officers established ranching operations and a sawmill in the Zuni Mountains. Still, the Zunis retained most of their grazing land and almost all of their upper watershed. The next fifty years, however, would prove disastrous to the Zuni Tribe, which had long enjoyed its pre-eminent position in the region.

Having determined that a southern transcontinental railway would be beneficial to the

AREA OF ZUNI ABORIGINAL OWNERSHIP , 1846

SOURCES:

BASEMAPS - 1:250,000 USGS QUADS

BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v: UNITED STATES

UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987

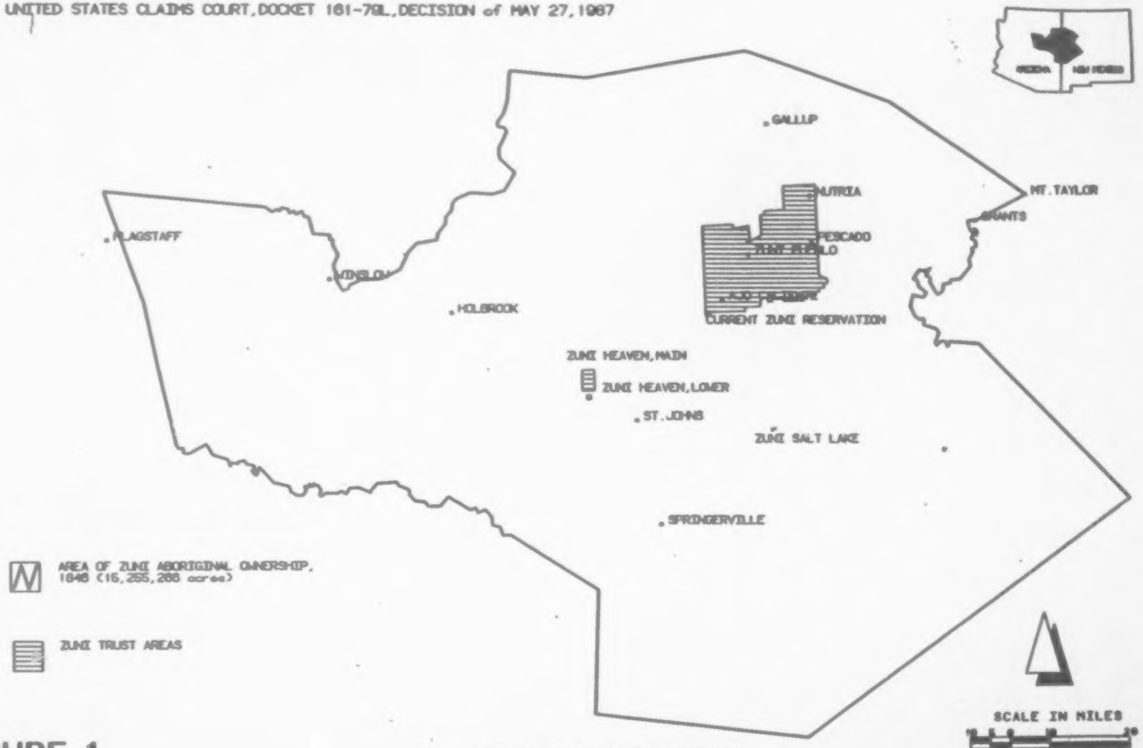

ARIZONA
NEW MEXICO
GALLUP
NUTRIA
MT. TAYLOR
GRANTS
FLAGSTAFF
PESCADO
ZUNI PUEBLO
WINSLOW
HOLBROOK
CURRENT ZUNI RESERVATION
ZUNI HEAVEN, MAIN
ZUNI HEAVEN, LOWER
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
AREA OF ZUNI ABORIGINAL OWNERSHIP, 1846 (16,255,208 acres)
ZUNI TRUST AREAS
SCALE IN MILES
20

FIGURE 1

PREPARED FOR THE ZUNI TRIBE BY ESRI

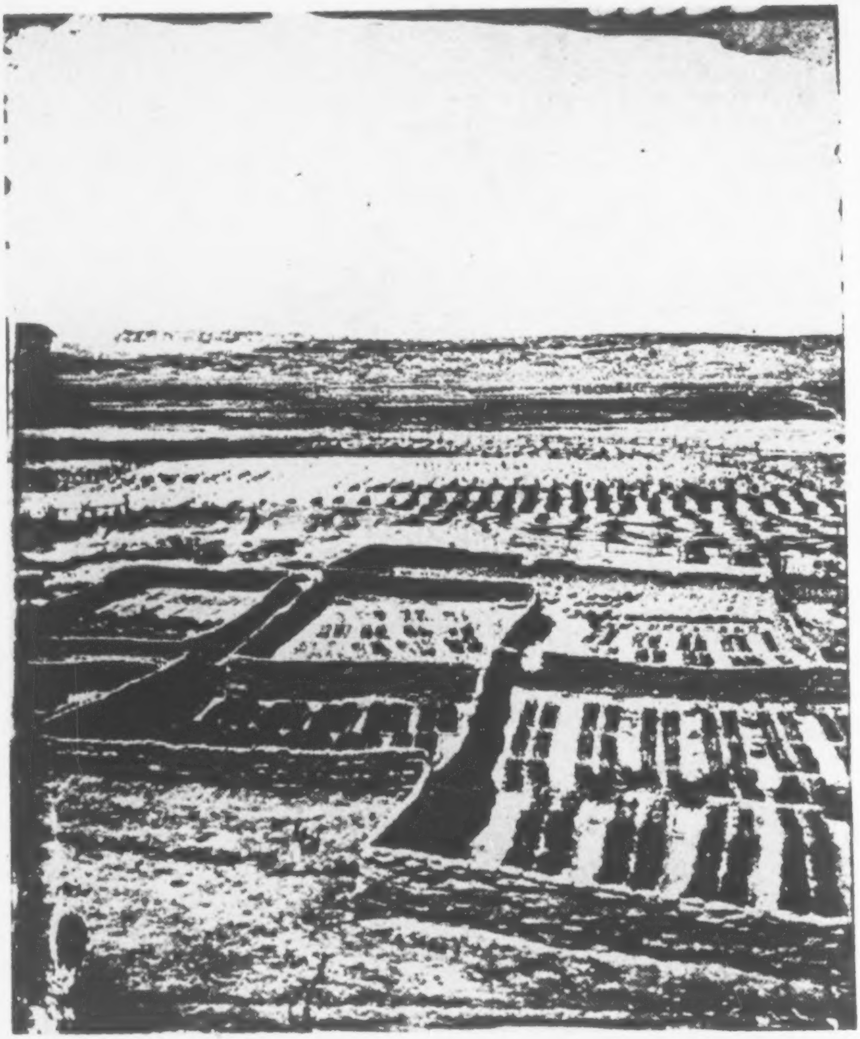


FIGURE 2. Zuni specialty crops were grown in "waffle gardens," seen here in the foreground. Corn fields can be seen in the background, stretching across the valley in this 1873 photograph by Timothy O'Sullivan, courtesy the National Archives.

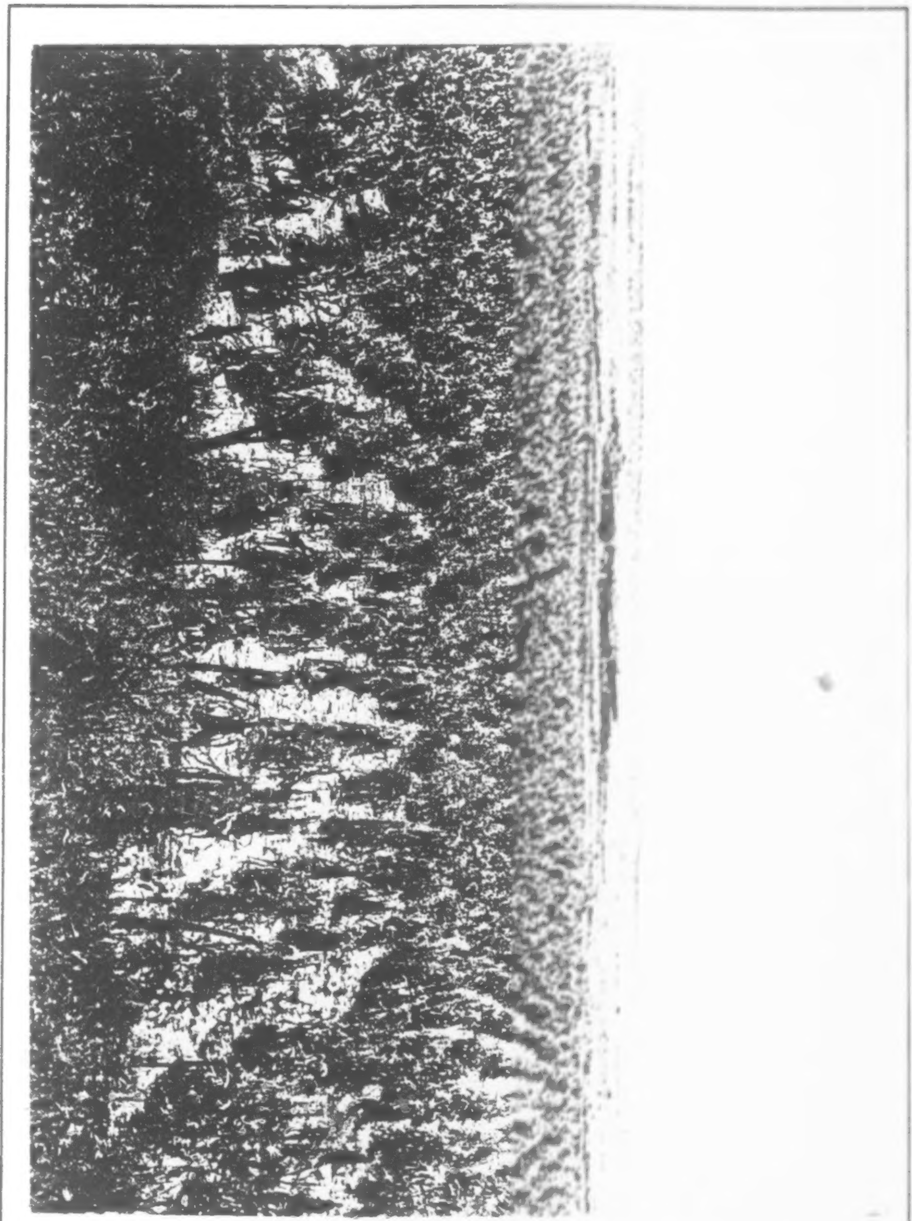


FIGURE 3. Zuni corn fields, Ojo Caliente, 1919. Photograph courtesy the Museum of the American Indian.

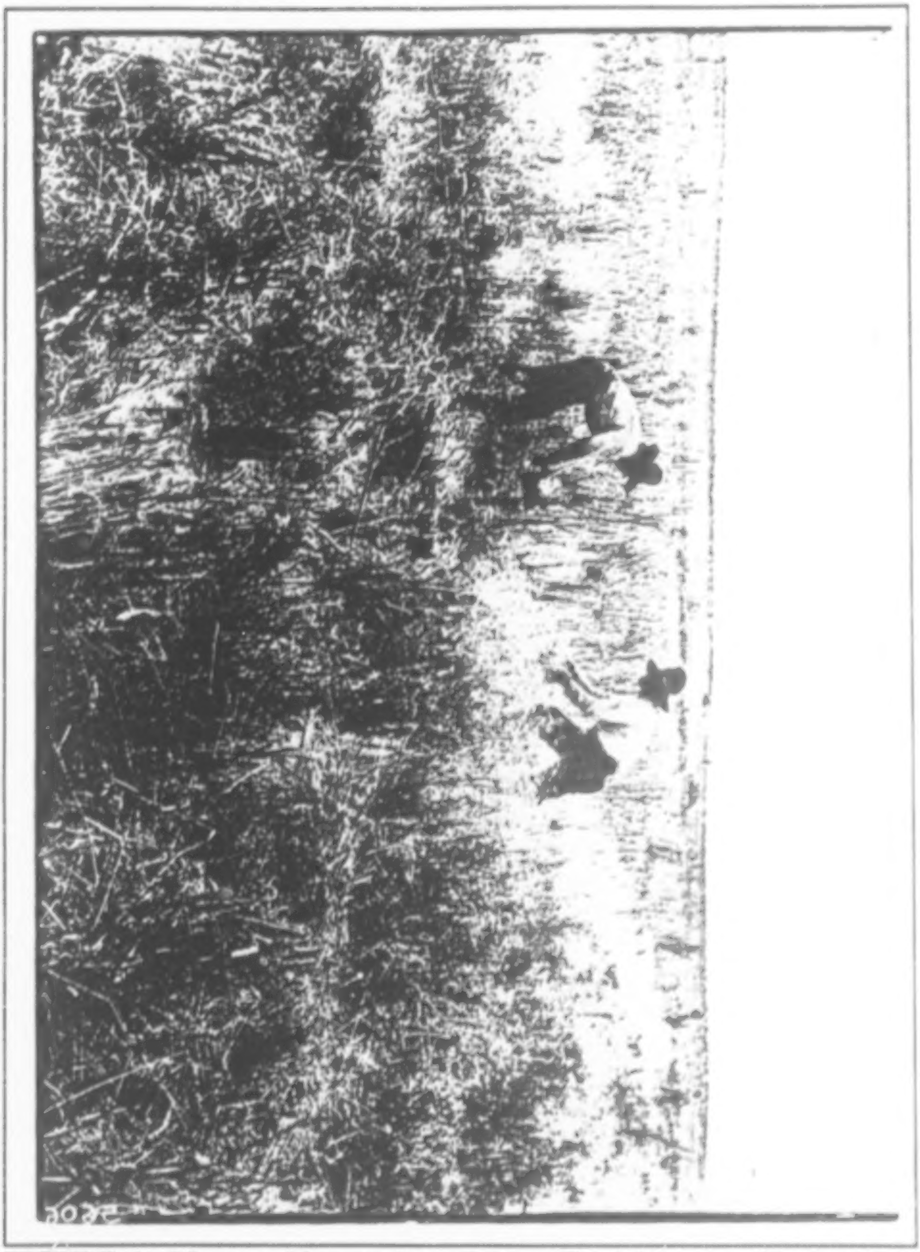


FIGURE 4. Men working a wheat field at Zuni farming village of Ojo Caliente in 1919. Photograph courtesy Museum of the American Indian.

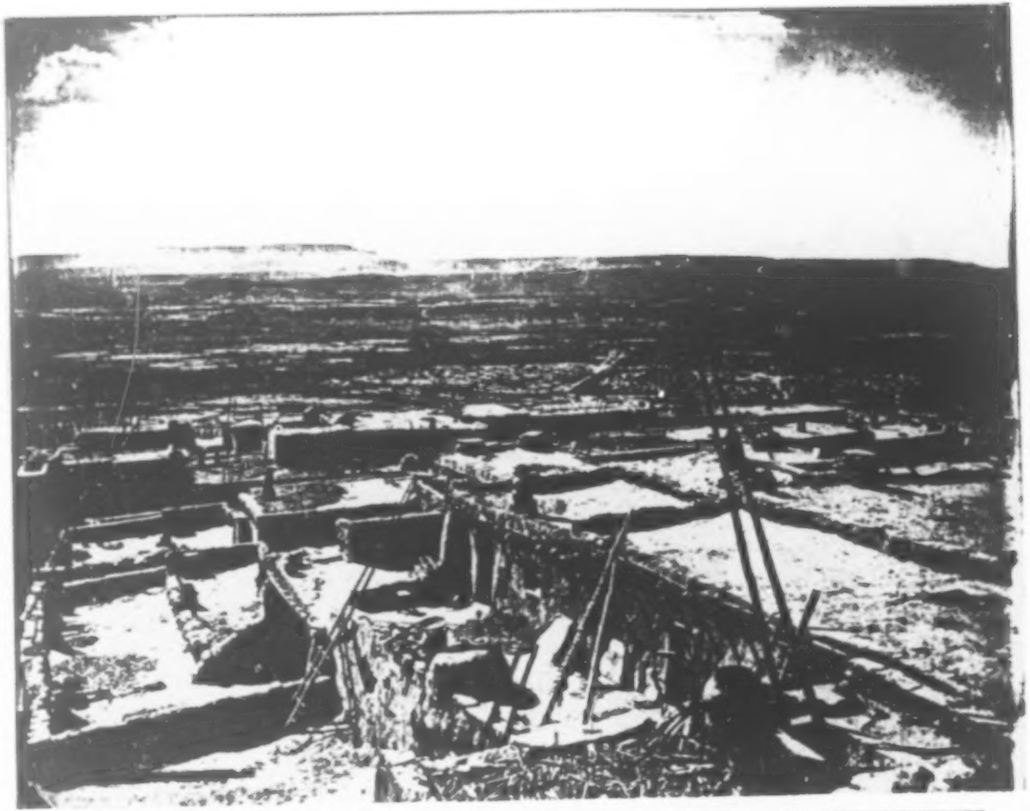
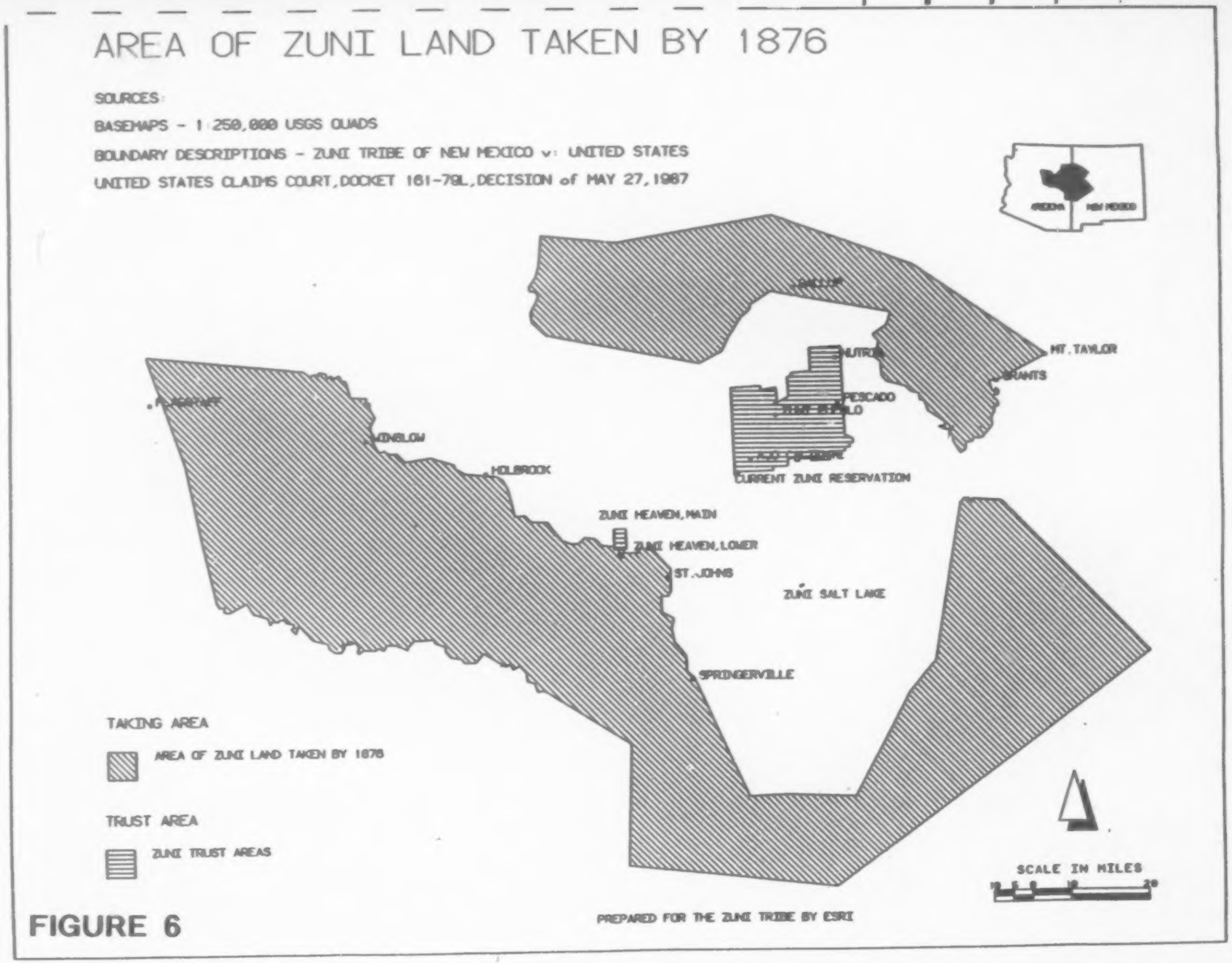


FIGURE 5. From the rooftop of Zuni Pueblo in 1879. Photo by John K. Hillers, courtesy the National Archives.



AREA OF ZUNI LAND TAKEN BY 1876

SOURCES:
BASEMAPS - 1:250,000 USGS QUADS
BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v: UNITED STATES
UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987

ARIZONA
NEW MEXICO
GALLUP
MT. TAYLOR
NUTRIA
GRANTS
PESCADO
CURRENT ZUNI RESERVATION
FLAGSTAFF
WINSLOW
HOLBROOK
ZUNI HEAVEN, MAIN
ZUNI HEAVEN, LOWER
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
▨ AREA OF ZUNI LAND TAKEN BY 1876
TRUST AREA
▤ ZUNI TRUST AREAS
SCALE IN MILES
10
5
0
10
20

FIGURE 6

PREPARED FOR THE ZUNI TRIBE BY ESRI

nation, Congress had made a vast land-grant to the Atlantic and Pacific Railroad in order to underwrite the expense of the monumental endeavor. As the railroad approached Zuni territory, many actions of the government signaled the changes that were coming. A territorial line was surveyed between New Mexico and Arizona, huge contracts for timber were let by the railroad company, and the federal government set aside a small tract of land it said would suffice for the Zuni Reservation. In 1881 the tracks cut a swath through what had been Zuni territory, and lumbermen with contracts for tens of millions of board feet of lumber cut roads into the Zuni watershed.

The railroad not only opened up immense tracts of southwestern lands for non-Indian settlement, it created enormous opportunities for business ventures and land speculation. With the railroad now available for shipping lumber, the value of the native stand of pine timber in the Zuni Mountains was quickly realized. In 1886 officers at Fort Wingate incorporated and purchased 40,000 acres of the choicest lands of the Zuni Mountains from the railroad. The commander of the fort, who also became the president of the Cibola Land and Cattle Company, arranged a beef contract between his company and the fort, and soon had 12,000 cattle ranging on the Zunis' watershed. In 1892 another concern purchased 300,000 acres of timbered lands in the Zuni Mountains, including most of the rest of the Zuni watershed. Giant sawmills began to process millions upon millions of board feet of lumber. During the same decade over 200,000 sheep were herded into the Zuni Mountains. At the same time, the Zunis' own grazing area was being restricted, and their flocks were being pushed back in toward the heart of their territory (Figure 7). As a result of the damage to the upper Zuni watershed, caused by the overgrazing

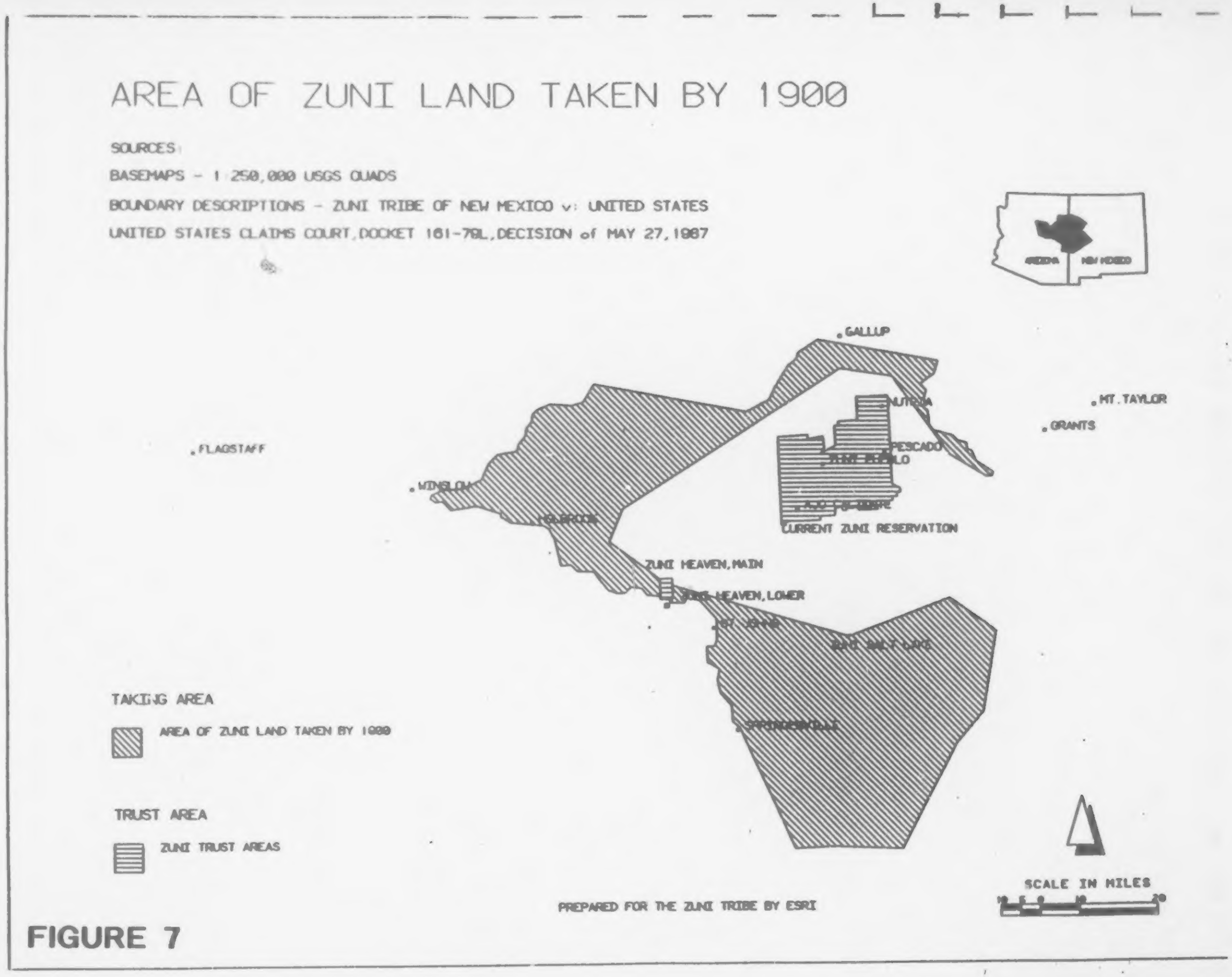

AREA OF ZUNI LAND TAKEN BY 1900
SOURCES:
BASEMAPS - 1:250,000 USGS QUADS
BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v. UNITED STATES
UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987
ARIZONA
NEW MEXICO
GALLUP
MT. TAYLOR
GRANTS
FLAGSTAFF
WINSLOW
HOLBROOK
NUTRIA
PESCADO
ZUNI PUEBLO
OJO CALIENTE
CURRENT ZUNI RESERVATION
ZUNI HEAVEN, MAIN
ZUNI HEAVEN, LOWER
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
▨ AREA OF ZUNI LAND TAKEN BY 1900
TRUST AREA
▤ ZUNI TRUST AREAS
SCALE IN MILES
10 5 0 10 20
PREPARED FOR THE ZUNI TRIBE BY ESRI

FIGURE 7

of stock and the cutting of timber, in about 1885 streams began to cut channels into the mountain valley floors above the Zuni Reservation.

By the early 1890s Congress had been alerted to fact that serious damage was taking place on the public lands in the West. In 1891 an Act of Congress provided authority to the President to set aside national forests. In 1897 a special report to Congress from the National Academy of Sciences described in detail the erosion that was occurring in western forests as a result of overgrazing and improper logging practices. In 1898 Gifford Pinchot became head of the Division of Forestry in the Department of Agriculture. Both the Forestry Division and Division R in the General Land Office carried out investigations in the West to determine which forest lands should be set aside in order to preserve important watersheds and provide a future supply of timber for the nation. A forest reserve was suggested for the Zuni Mountain area and in 1899 and again in 1900 special agents of Division R visited the Zuni Mountains, examined the watershed and the timber, took affidavits from concerned individuals in the area and then reported back to the General Land Office. When New Mexico Territorial officials learned of the possible move to establish a National Forest in the Zuni Mountains, they quickly took advantage of an 1898 Act of Congress that gave the territory the right to choose lands in the public domain, and selected a vast tract of 153,000 acres, covering much of the best remaining timber lands. The timber on this land would be sold during the next fifteen years to provide income to benefit various territorial interests.

The special agents for the General Land Office reported that as a result of the overgrazing of cattle and then sheep in the Zuni Mountains, deforestation was occurring, the vegetative cover had been removed from much of the mountain range, and incisions in the watershed that had begun in the 1880s now were becoming widespread and severe. The government agent for the Zuni Indians warned the General Land Office that if the mountains were not protected, more serious damage could occur to the Zuni watershed, and the Zunis' thousands of acres of agricultural land would be in jeopardy. Unfortunately, the federal government did not act at this time to preserve the Zuni Mountain timber and watershed.

During the first decade of the 20th century, logging and overgrazing intensified in the Zuni watershed, and combined with two major dam failures, had catastrophic results. During that decade the Zunis lost control of another half million acres (Figure 8), much of it comprising their traditional grazing land. As a result their flocks were pushed back in on an area inadequate to provide sufficient grass. Navajo and non-Indian flocks were already decimating the upper Zuni watershed. At the same time, logging interests built railroads into the Zuni watershed and intensive commercial logging operations focused on the portion of the Zuni Mountains just above the Zuni village of Nutria. By 1911 many millions of board feet of lumber were cut from tens of thousands of acres within the watershed (Figures 9 and 10). Section after section was cut over by loggers whose practices did not include elimination of "slash" and who cut virtually 100% of the marketable timber, leaving no chance for reseeding of the forest, let alone reforestation (Figure 11).

During the same period two major dam failures compounded the problems and increased

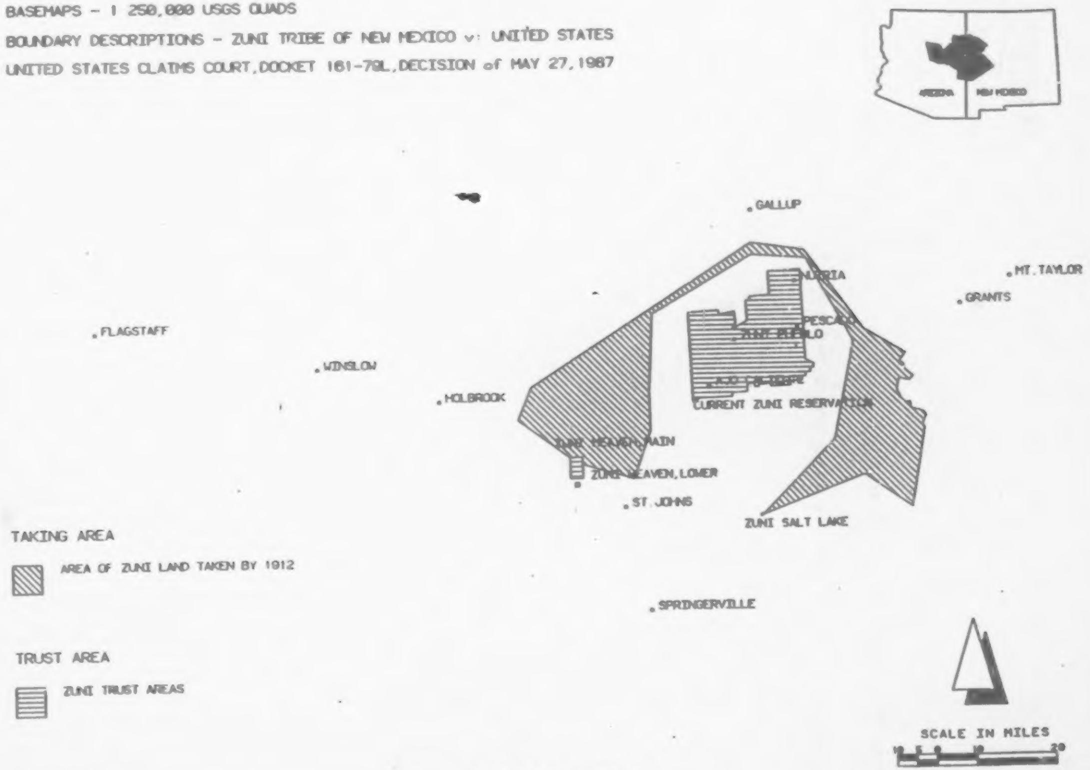
AREA OF ZUNI LAND TAKEN BY 1912

SOURCES:

BASEMAPS - 1 250,000 USGS QUADS

BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v: UNITED STATES

UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987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ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
▨ AREA OF ZUNI LAND TAKEN BY 1912
TRUST AREA
▤ ZUNI TRUST AREAS
SCALE IN MILES
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5
0
10
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FIGURE 8

PREPARED FOR THE ZUNI TRIBE BY ESRI

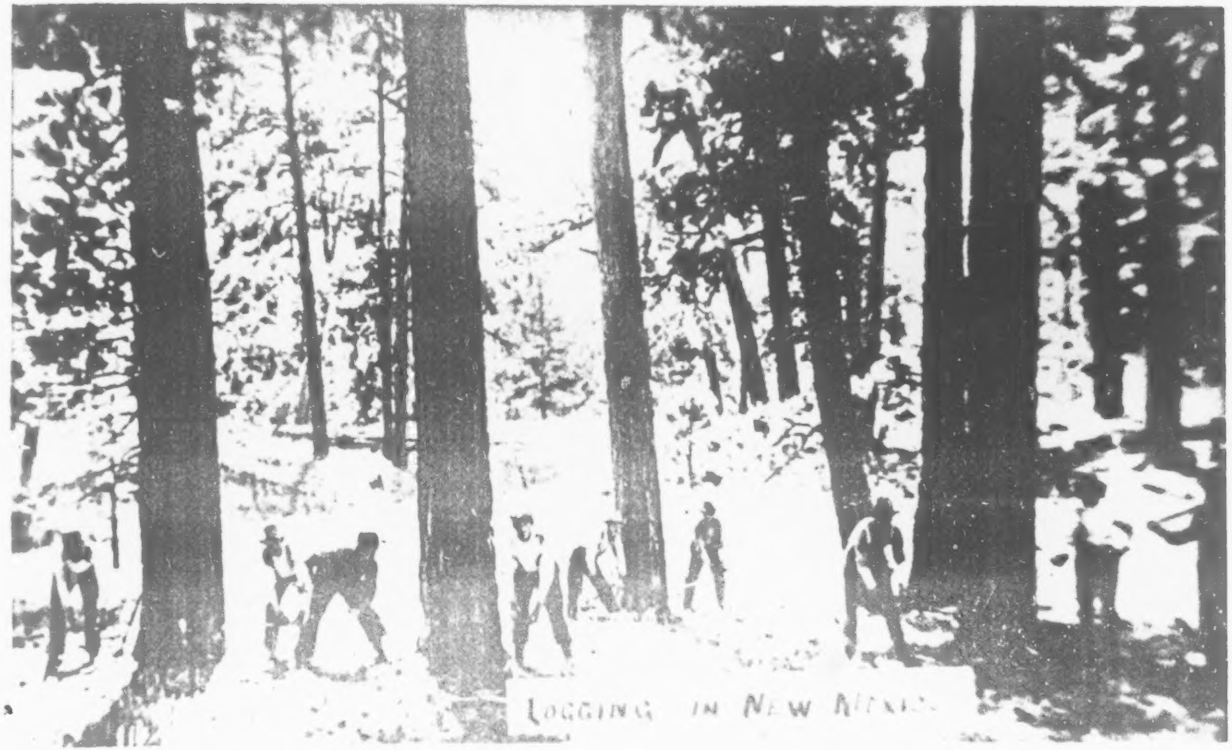
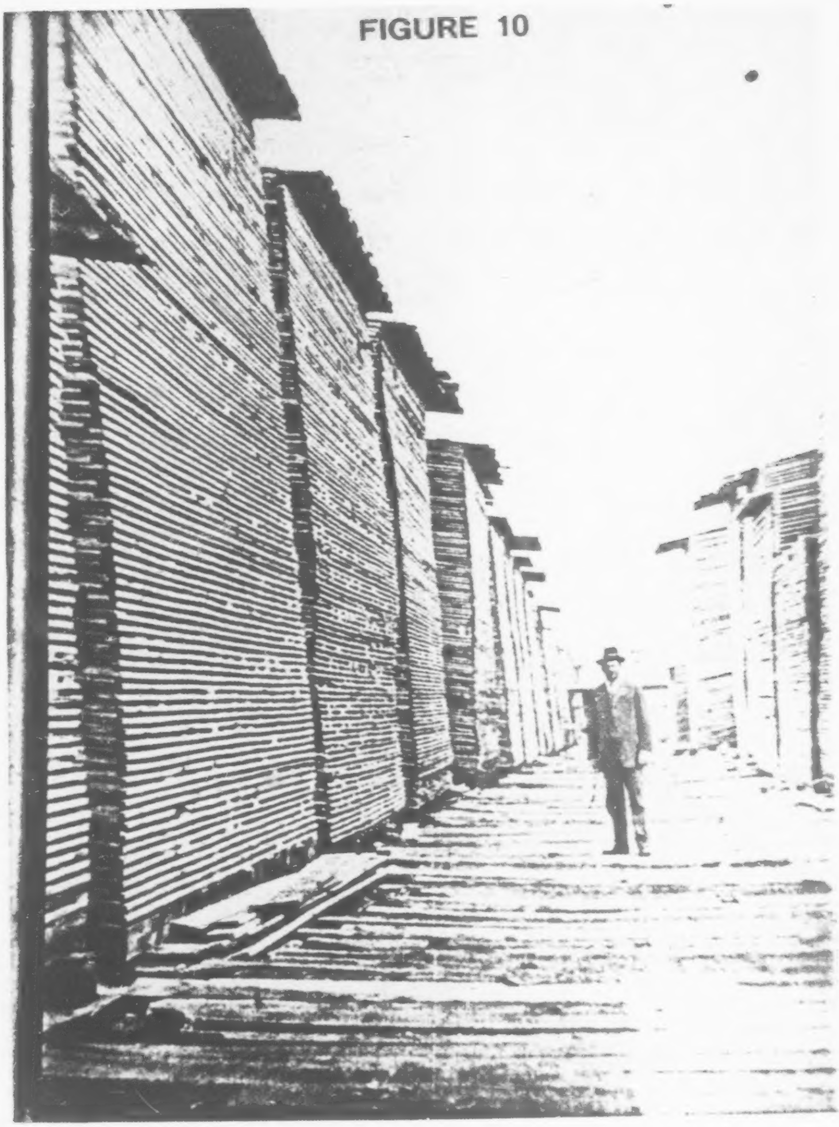

LOGGING IN NEW MEXIC

FIGURE 9

Logging in the Zuni watershed, ca. 1910. Photograph courtesy Gallup Public Library.

FIGURE 10



Stacked lumber at McGaffey Mill, in the mountains above Zuni, in 1914. Photograph courtesy Gallup Public Library.

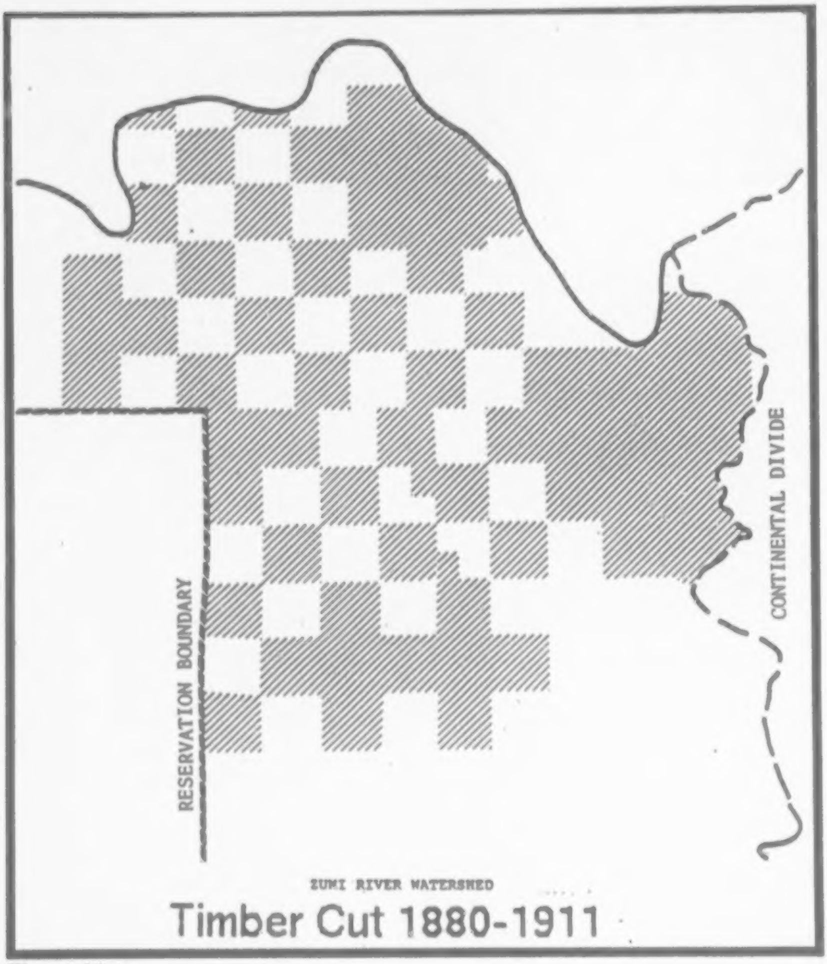

RESERVATION BOUNDARY
CONTINENTAL DIVIDE
ZUNI RIVER WATERSHED
Timber Cut 1880-1911

Figure 11.

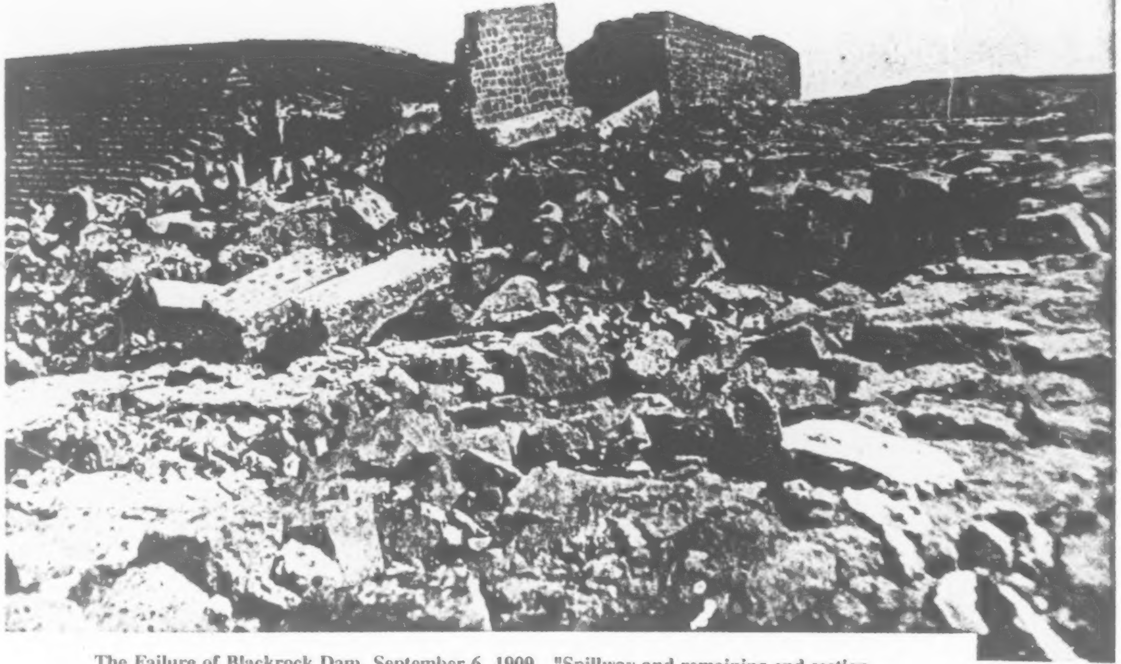
Lands within the Zuni watershed that were cut over between 1880 and 1911 are here shown in the shaded area. Data was obtained from timber sales records and by photointerpretation. The interrupted line is the Continental Divide, and the continuous line the extent of the Zuni River watershed. The diagonally hatched line is the boundary of the Zuni Indian Reservation.

the erosion in the Zuni watershed. In 1905, downstream from some of the major timber operations, the Ramah Reservoir failed. Inside of twenty-four hours 20,000 acre feet of water gushed through the Zuni River channel, overnight cutting an incision 10 feet deep in the Zuni riverbed, 17 miles away from the failed dam.

Zunis had long been farmers and had been productively cultivating thousands of acres of land for centuries, but the United States government believed that the traditional agricultural practices of the Zunis were uncivilized, and, in addition, prominent U. S. political and military officials wanted to take over the Zuni village of Nutria for their own purposes. For these reasons the United States set out to allot very small parcels (Zuni's Superintendent suggested 10 acres) of land to adult, male Zunis and then open the remainder of the reservation to non-Indian use under the Dawes Allotment Act. In order to carry this plan out, in 1904 the government began constructing a large dam at a gap in the basalt cliffs along the Zuni River near the tribe's main village. When the dam was finally finished and filled for the first time in 1909, it failed. The "engineers" in charge of the dam had not discovered a strata of sand a few feet under the spillway. On September 6, 1909 the spillway and a portion of the dam collapsed. The contents of the reservoir poured out, washing over, under and through Blackrock Dam. At the height of the calamity, between 7:00 pm and 11:00 pm, 72,000,000 cubic feet of water left the reservoir in a rampaging torrent, leaving the dam a shambles and the river channel and surrounding countryside looking like a war zone (Figure 12).

By 1912, when the General Land Office did a survey of much of the Zuni Reservation,

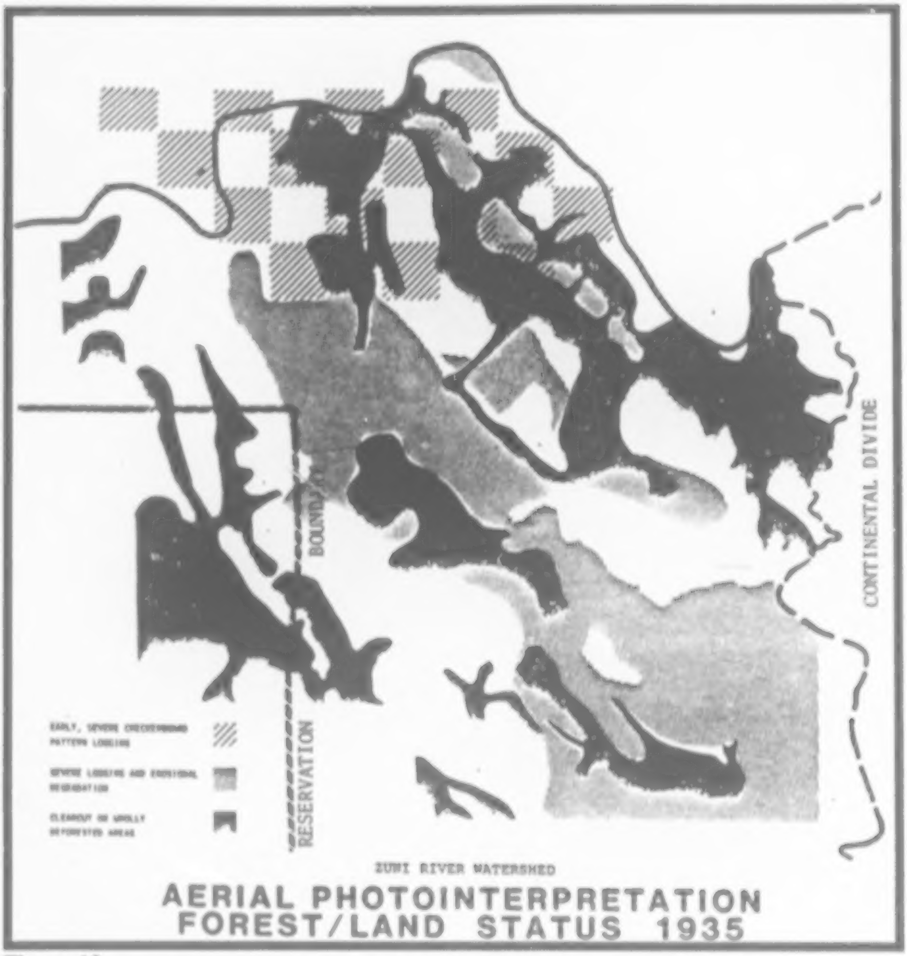
FIGURE 12



The Failure of Blackrock Dam, September 6, 1909. "Spillway and remaining end section of dam. Looked very much like a recent upheaval. . ." Zuni Agency, Forestry Office, Bureau of Indian Affairs.

incisions in the watershed were widespread, some twenty feet deep, thirty feet deep, or even deeper. By that time, even with the dam rebuilt and perhaps a thousand acres available under the new government ditches, the total of Zuni cultivated lands had declined from 10-12,000 acres in the 19th century, to about 8,000 in 1912. By that time about 50% of the prime timberland in the Nutria drainage had been cut over.

Between 1912 and 1940 all but 5,000 acres of the remaining merchantable timber in the Zuni Mountains was cut over. Although logging methods improved later in the 20th century, the Forest Service in 1940 complained that the Zuni Mountain area was left denuded, barren and cut through with gullies (Figures 13, 14, 15, 16 and 17; see also maps 1-5). During the period 1929-1937 seven additional dams were constructed by the government on the Zuni Reservation (Figure 18). Each of them failed at least once (Figure 19). The Zunis also lost another million acres of traditional territory during the same period (Figures 20, 21 and 22). The effects of the timber operations (Figure 23), overgrazing and failed dams on the Zuni watershed included increased erosion through the 1930s, heavy siltation in the government dams, lowered water tables in the alluvial aquifers, destruction of wildlife and decreased carrying capacity on the grazing lands. In the 1930s and 1940s the United States Soil Conservation Service, the National Forest Service and the Bureau of Indian Affairs all acknowledged the damages and the causes of those damages. To Zuni, the most important damage the tribe suffered was the loss of agricultural land. By 1934 only 5200 acres were under cultivation, by 1968 the number of acres under cultivation had dropped to 2185. Today only 1370 acres are being cultivated. At least 11,000 acres of prime irrigable lands have been lost to Zuni agricultural use as a result of the


EARLY, SEVERE CHECKERBOARD PATTERN LOGGING
SEVERE LOGGING AND EROSIONAL DEGRADATION
CLEARCUT OR WHOLLY DEFORESTED AREAS
RESERVATION BOUNDARY
CONTINENTAL DIVIDE
ZUNI RIVER WATERSHED

AERIAL PHOTOINTERPRETATION
FOREST/LAND STATUS 1935

Figure 13

Aerial photointerpretation of forest and land status derived through interpretation of the National Archives 1935 aerial photographs. The darker areas may have been cut over in the 1880s. The dotted and hatched lands suffered severe deforestation by at least the date of the aerial photographs (1935), although many were cut over prior to 1911.

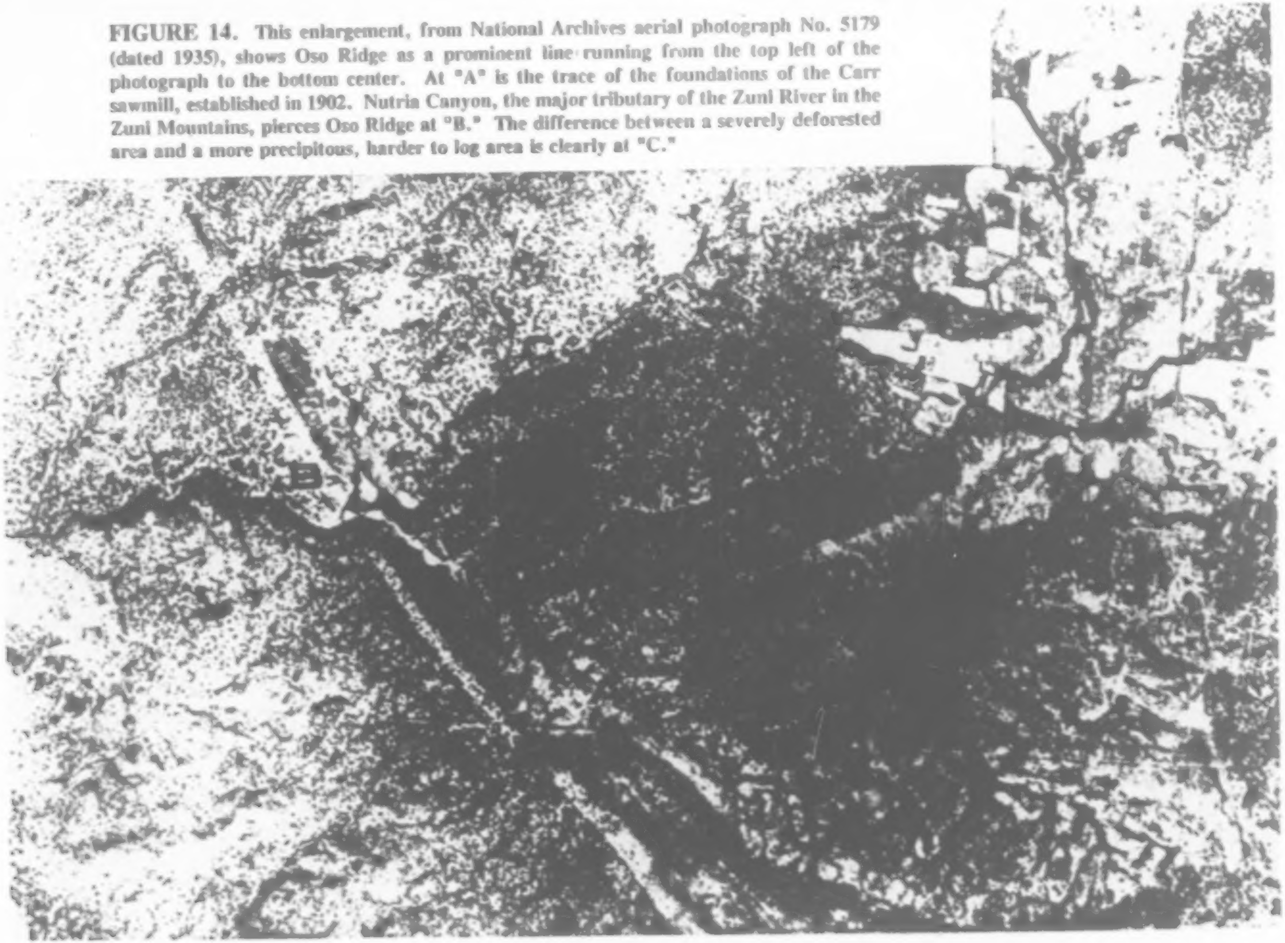


FIGURE 14. This enlargement, from National Archives aerial photograph No. 5179 (dated 1935), shows Oso Ridge as a prominent line running from the top left of the photograph to the bottom center. At "A" is the trace of the foundations of the Carr sawmill, established in 1902. Nutria Canyon, the major tributary of the Zuni River in the Zuni Mountains, pierces Oso Ridge at "B." The difference between a severely deforested area and a more precipitous, harder to log area is clearly at "C."

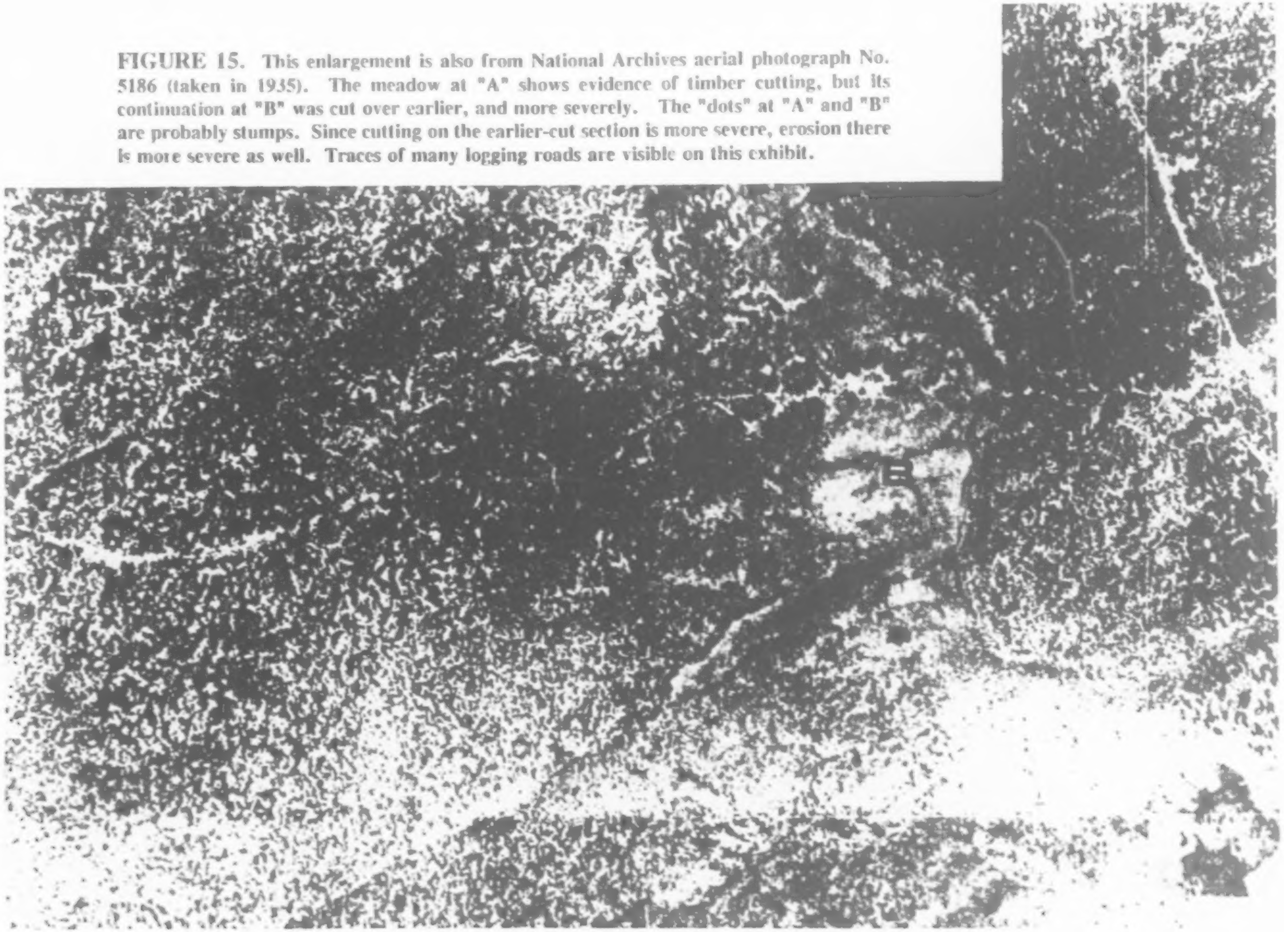


FIGURE 15. This enlargement is also from National Archives aerial photograph No. 5186 (taken in 1935). The meadow at "A" shows evidence of timber cutting, but its continuation at "B" was cut over earlier, and more severely. The "dots" at "A" and "B" are probably stumps. Since cutting on the earlier-cut section is more severe, erosion there is more severe as well. Traces of many logging roads are visible on this exhibit.

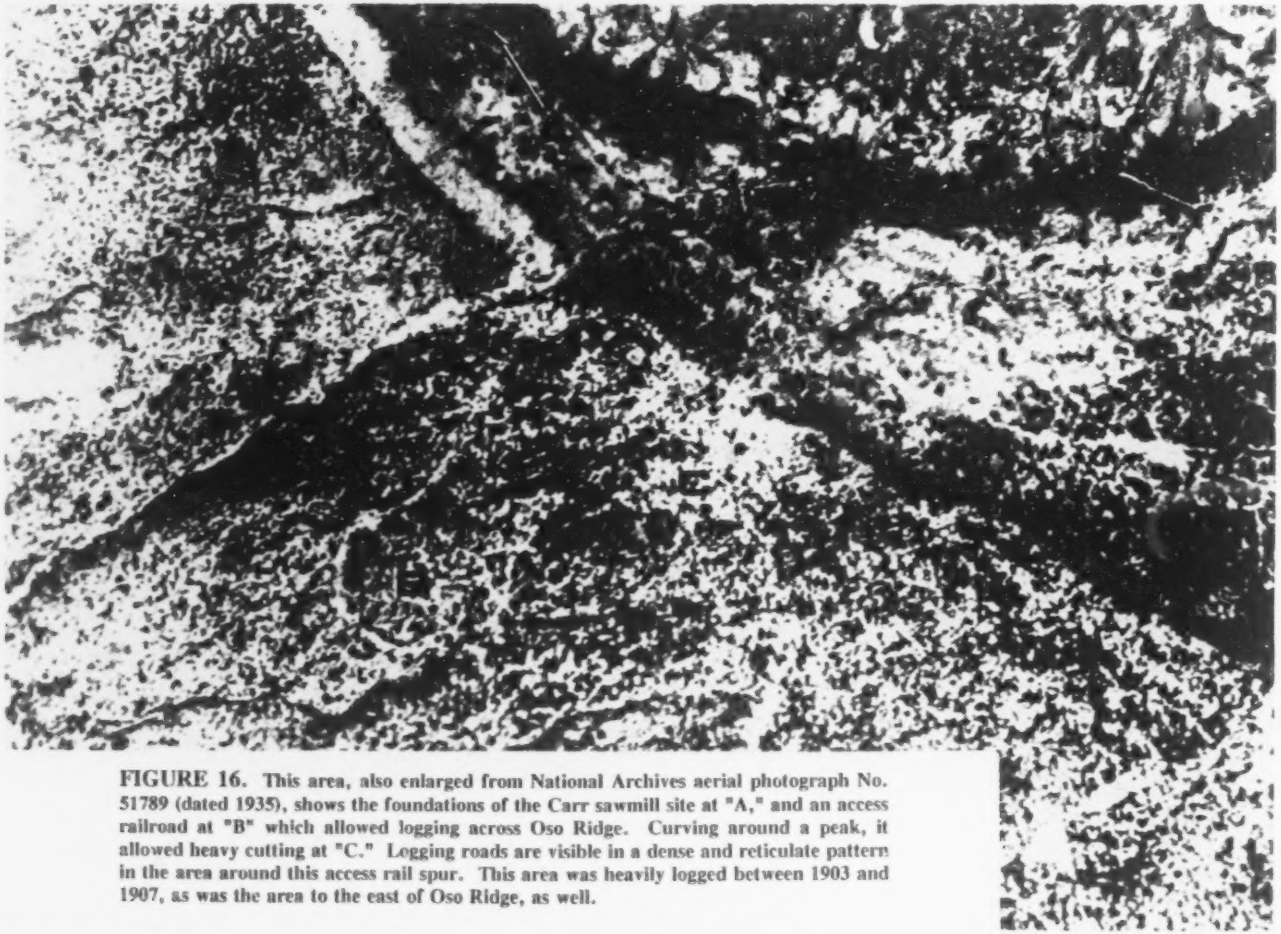


FIGURE 16. This area, also enlarged from National Archives aerial photograph No. 51789 (dated 1935), shows the foundations of the Carr sawmill site at "A," and an access railroad at "B" which allowed logging across Oso Ridge. Curving around a peak, it allowed heavy cutting at "C." Logging roads are visible in a dense and reticulate pattern in the area around this access rail spur. This area was heavily logged between 1903 and 1907, as was the area to the east of Oso Ridge, as well.

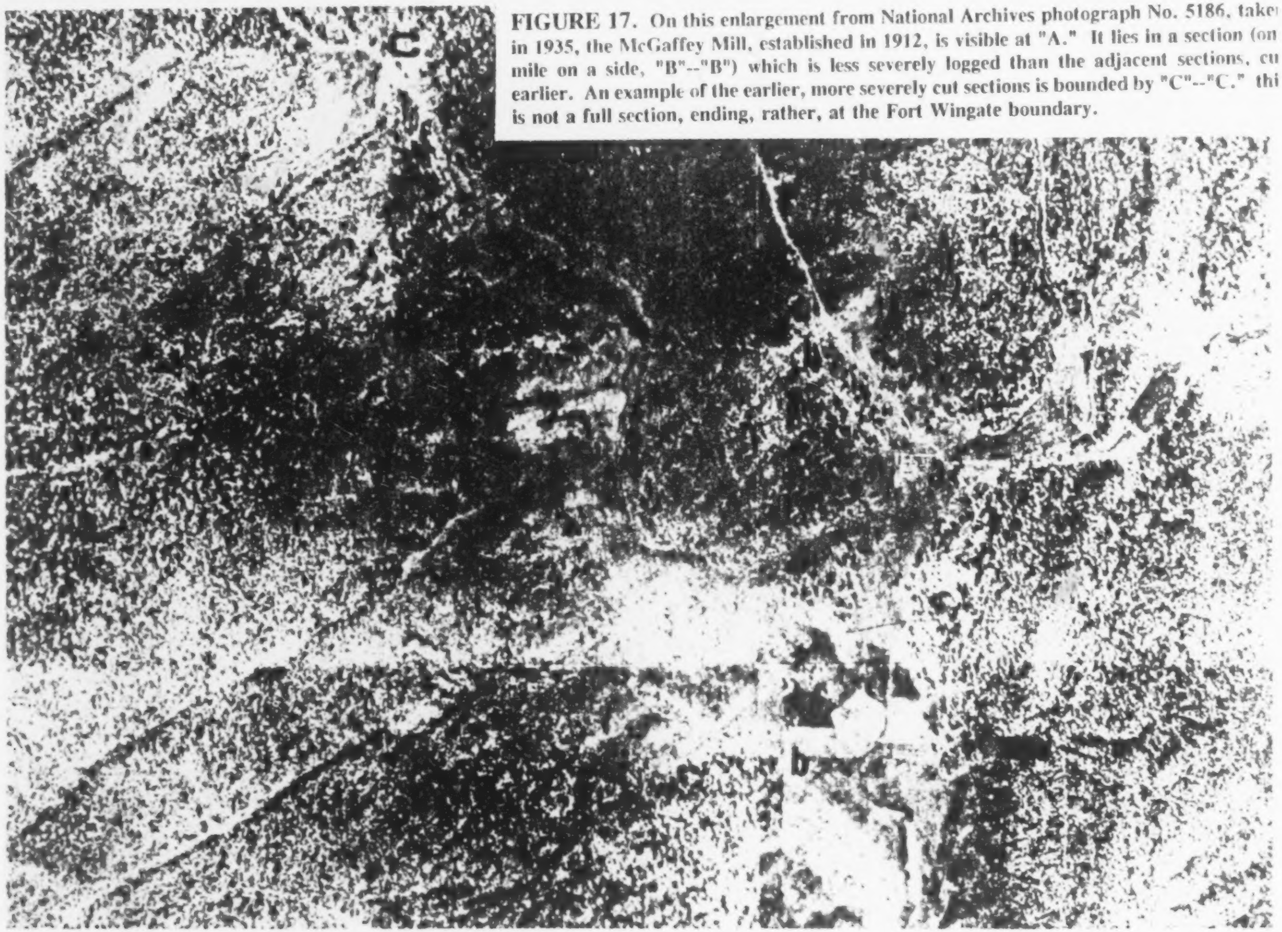
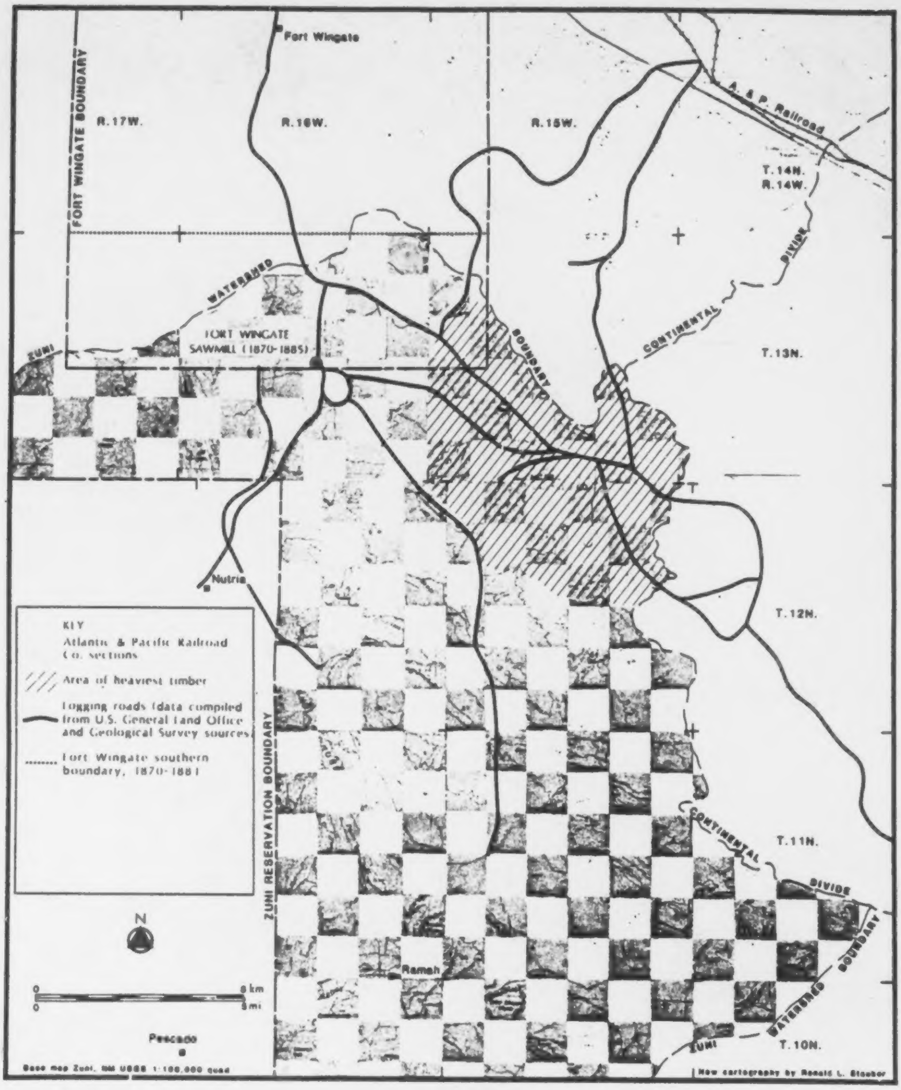


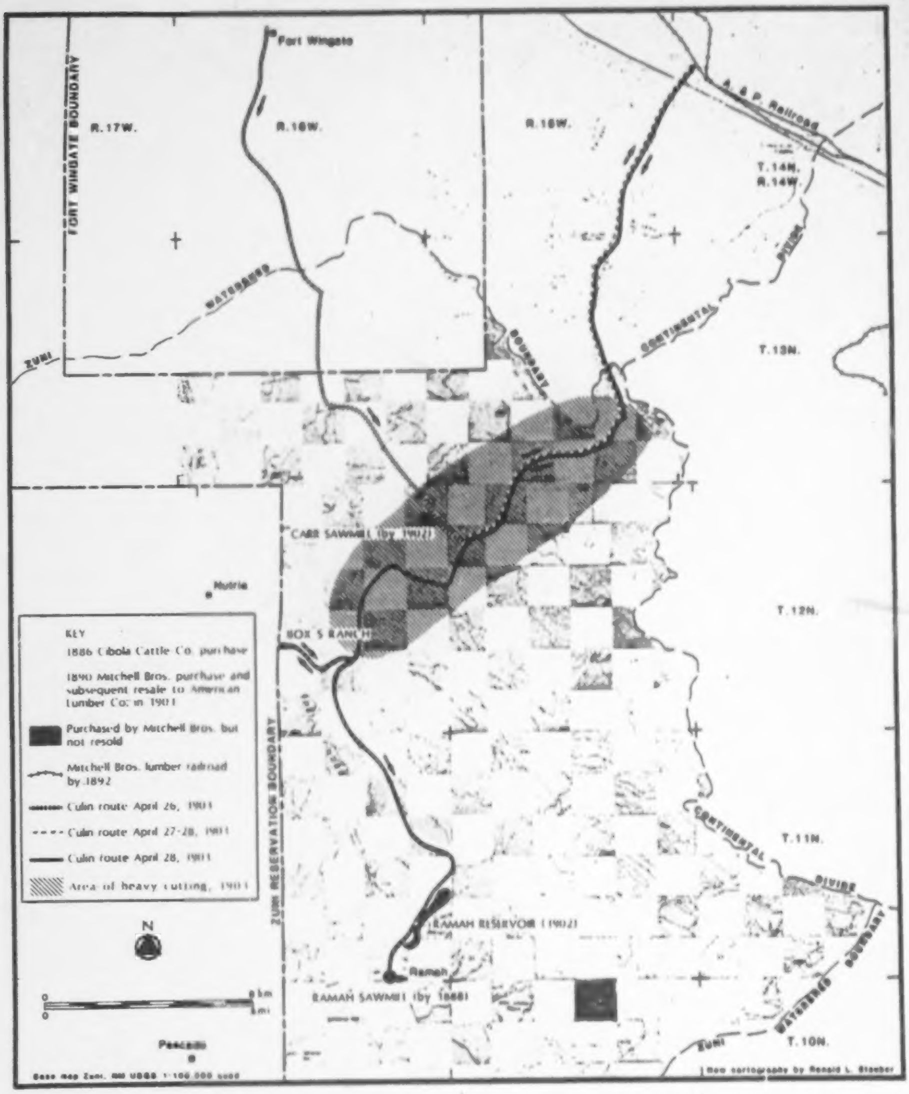
FIGURE 17. On this enlargement from National Archives photograph No. 5186, take in 1935, the McGaffey Mill, established in 1912, is visible at "A." It lies in a section (on mile on a side, "B"--"B") which is less severely logged than the adjacent sections, cu earlier. An example of the earlier, more severely cut sections is bounded by "C"--"C." thi is not a full section, ending, rather, at the Fort Wingate boundary.


Fort Wingate
FORT WINGATE BOUNDARY
R.17W.
R.16W.
R.15W.
A. & P. Railroad
T.14N.
R.14W.
DIVIDE
CONTINENTAL
T.13N.
ZUNI
WATERSHED
BOUNDARY
FORT WINGATE
SAWMILL (1870-1885)
Nutria
T.12N.
KEY
Atlantic & Pacific Railroad Co. sections
Area of heaviest timber
Logging roads (data compiled from U.S. General Land Office and Geological Survey sources)
Fort Wingate southern boundary, 1870-1881
ZUNI RESERVATION BOUNDARY
CONTINENTAL
T.11N.
DIVIDE
N
0
8 km
0
5 mi
Ramah
Pescado
ZUNI
WATERSHED
BOUNDARY
T.10N.

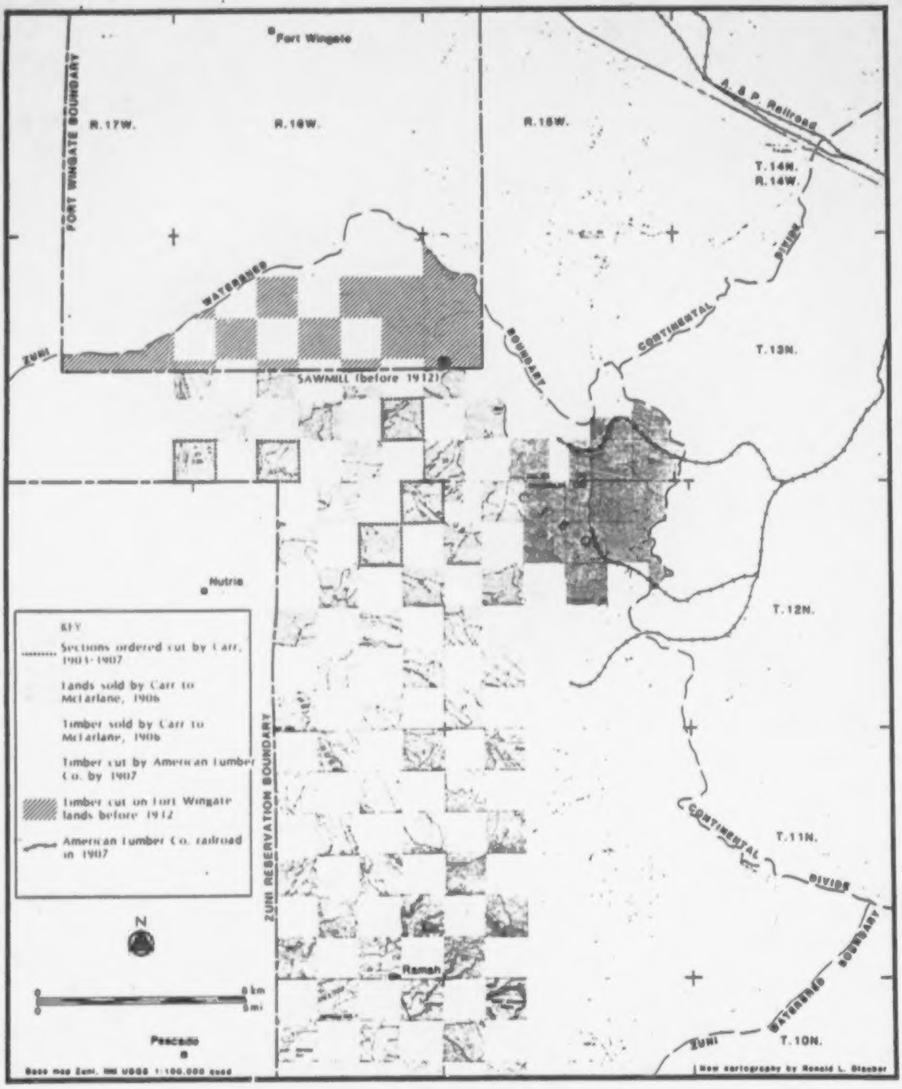
Base map Zuni, NM USGS 1:100,000 quad

New cartography by Ronald L. Stoeber

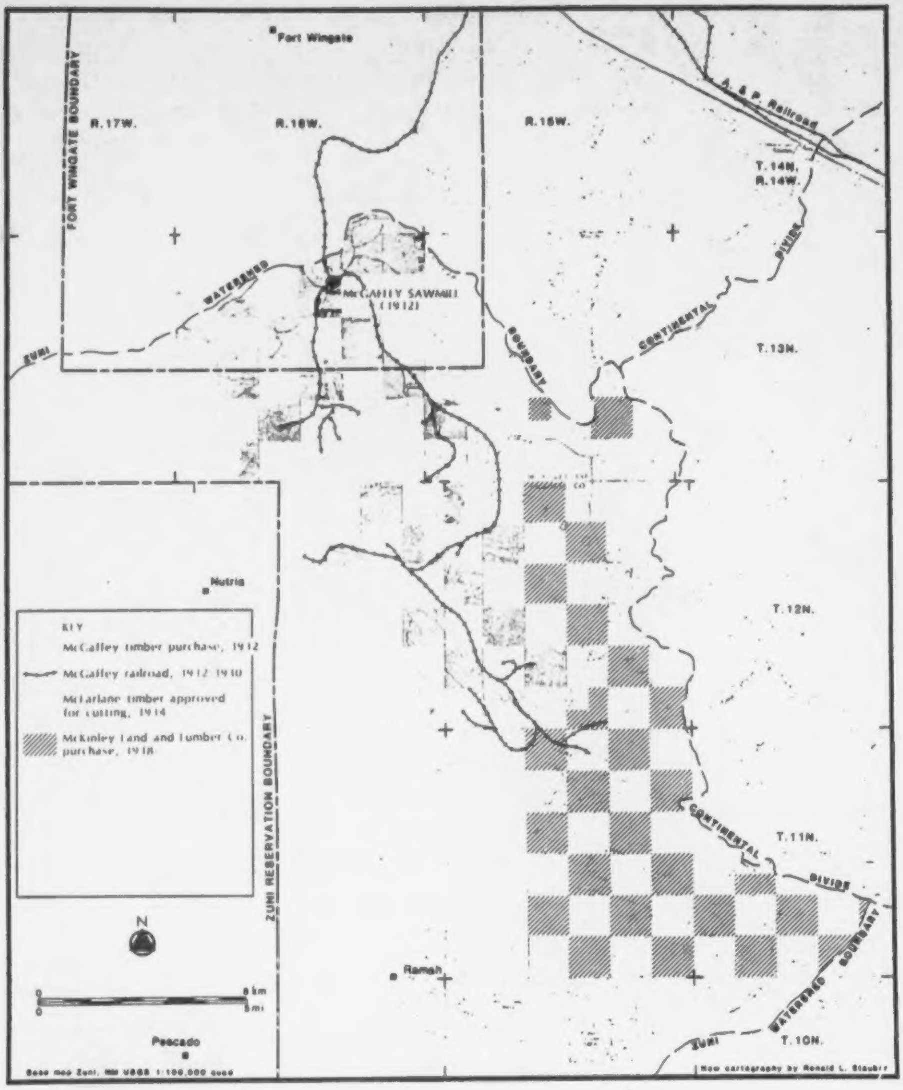
Map 1: Timber Cut in the Zuni Watershed, 1870 - 1885


Fort Wingate
FORT WINGATE BOUNDARY
R.17W.
R.16W.
R.15W.
A. & P. Railroad
T.14N.
R.14W.
ZUNI WATERSHED
BOUNDARY
CONTINENTAL DIVIDE
T.13N.
CARR SAWMILL (by 1902)
Nutria
T.12N.
BOX S RANCH
KEY
1886 Cibola Cattle Co. purchase
1890 Mitchell Bros. purchase and subsequent resale to American Lumber Co. in 1901
Purchased by Mitchell Bros. but not resold
Mitchell Bros. lumber railroad by 1892
Culin route April 26, 1903
Culin route April 27-28, 1903
Culin route April 28, 1903
Area of heavy cutting, 1903
ZUNI RESERVATION BOUNDARY
T.11N.
N
RAMAH RESERVOIR (1902)
Ramah
RAMAH SAWMILL (by 1888)
0
0
km
mi
Pescado
ZUNI WATERSHED BOUNDARY
T.10N.
Base map Zuni, NM USGS 1:100,000 scale
New cartography by Ronald L. Stauber

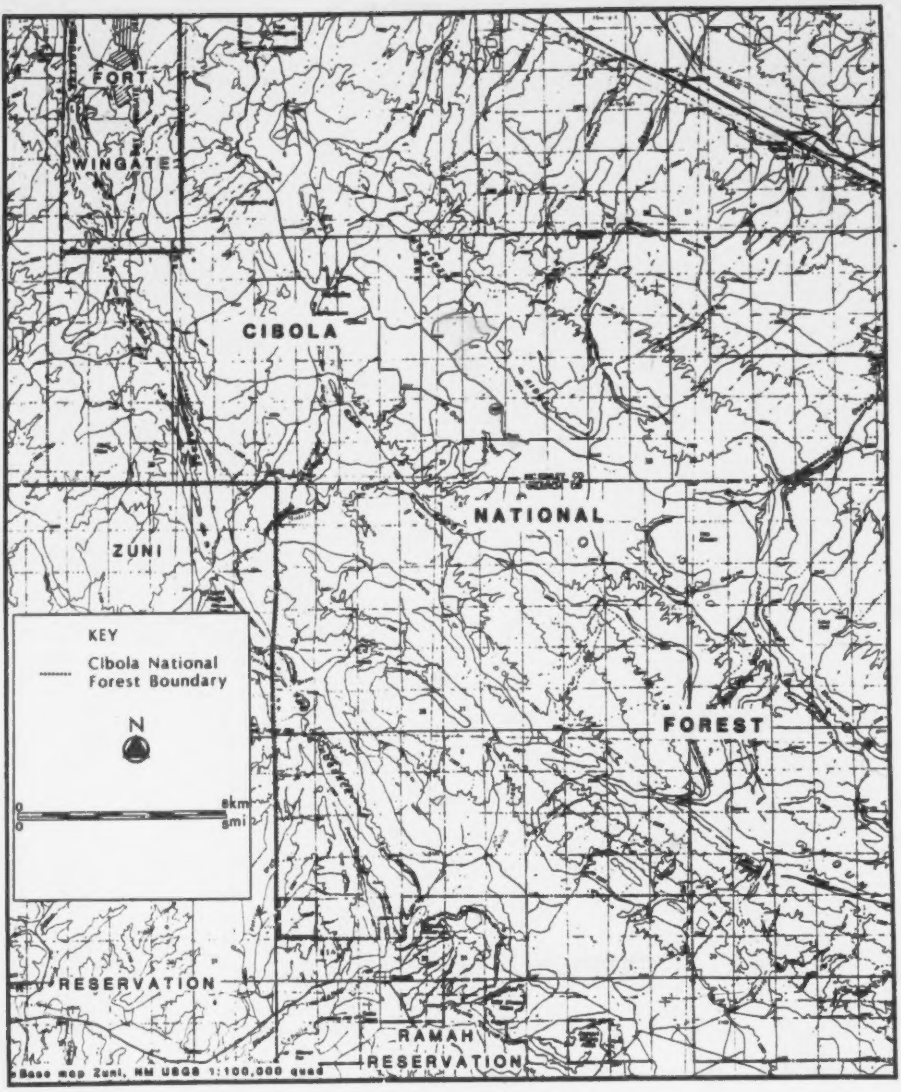
Map 2: Lumber Company Activity in the Zuni Watershed, 1886 - 1903


Fort Wingate
FORT WINGATE BOUNDARY
R.17W.
R.16W.
R.15W.
A. & P. Railroad
T.14N.
R.14W.
T.13N.
T.12N.
T.11N.
T.10N.
ZUNI WATERSHED BOUNDARY
CONTINENTAL DIVIDE
SAWMILL (before 1912)
Nutria
Ramah
Pescado
ZUNI RESERVATION BOUNDARY
KEY
Sections ordered cut by Carr, 1903-1907
Lands sold by Carr to McFarlane, 1906
Timber sold by Carr to McFarlane, 1906
Timber cut by American Lumber Co. by 1907
Timber cut on Fort Wingate lands before 1912
American Lumber Co. railroad in 1907
N
0
8 km
5 mi
Base map Zuni, NM USGS 1:100,000 quad
New cartography by Ronald L. Stauber

Map 3: Timber Cut in the Zuni Watershed Before 1912


Fort Wingate
FORT WINGATE BOUNDARY
R.17W.
R.16W.
R.15W.
A. & P. Railroad
T.14N.
R.14W.
McGAFFEY SAWMILL
(1912)
ZUNI WATERSHED BOUNDARY
CONTINENTAL DIVIDE
T.13N.
T.12N.
T.11N.
T.10N.
Nutria
Ramah
Pescado
ZUNI RESERVATION BOUNDARY
KEY
McGaffey timber purchase, 1912
McGaffey railroad, 1912-1930
McFarlane timber approved for cutting, 1914
McKinley Land and Lumber Co. purchase, 1918
N
0
8 km
0
5 mi
Base map Zuni, NM USGS 1:100,000 quad
New cartography by Ronald L. Stauber

Map 4: Timber Cut in the Zuni Watershed, 1912 - 1930


FORT
WINGATE
CIBOLA
NATIONAL
FOREST
ZUNI
RESERVATION
RAMAH
RESERVATION
KEY
Cibola National Forest Boundary
N
0
8km
0
5mi
Base map Zuni, NM USGS 1:100,000 quad

Map 5: Zuni Watershed Study Area

FIGURE 18

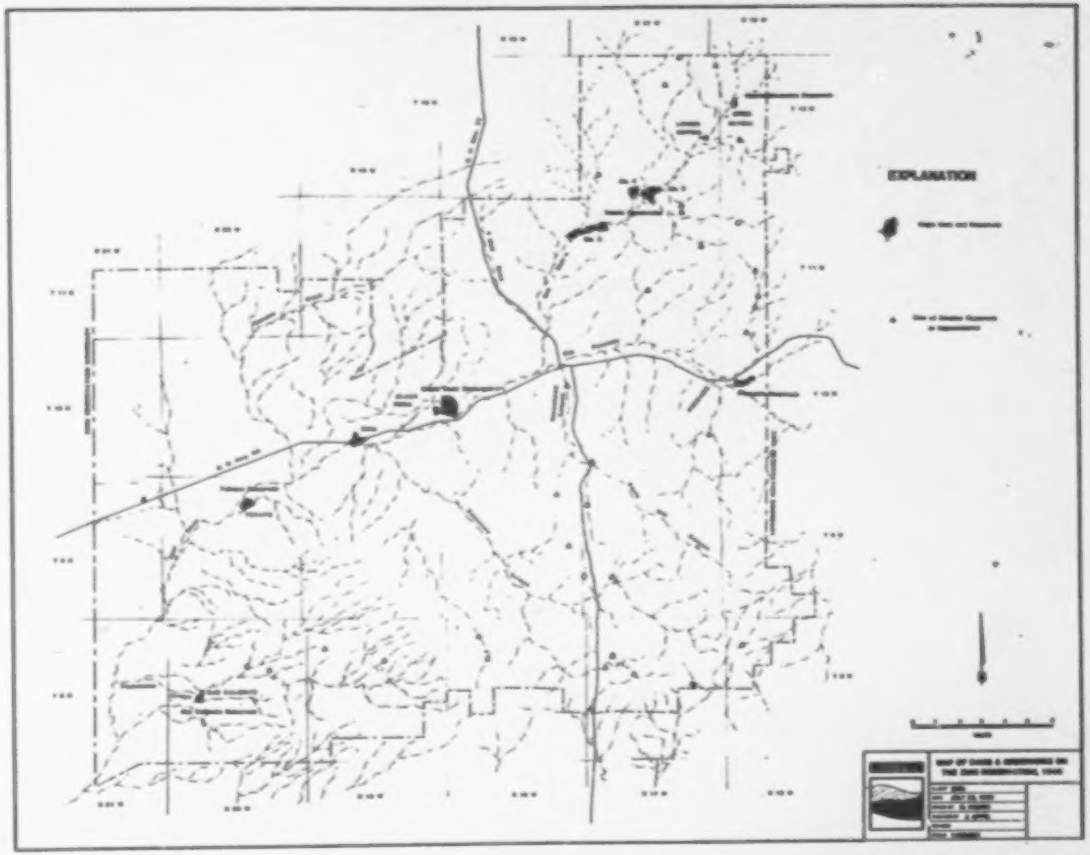
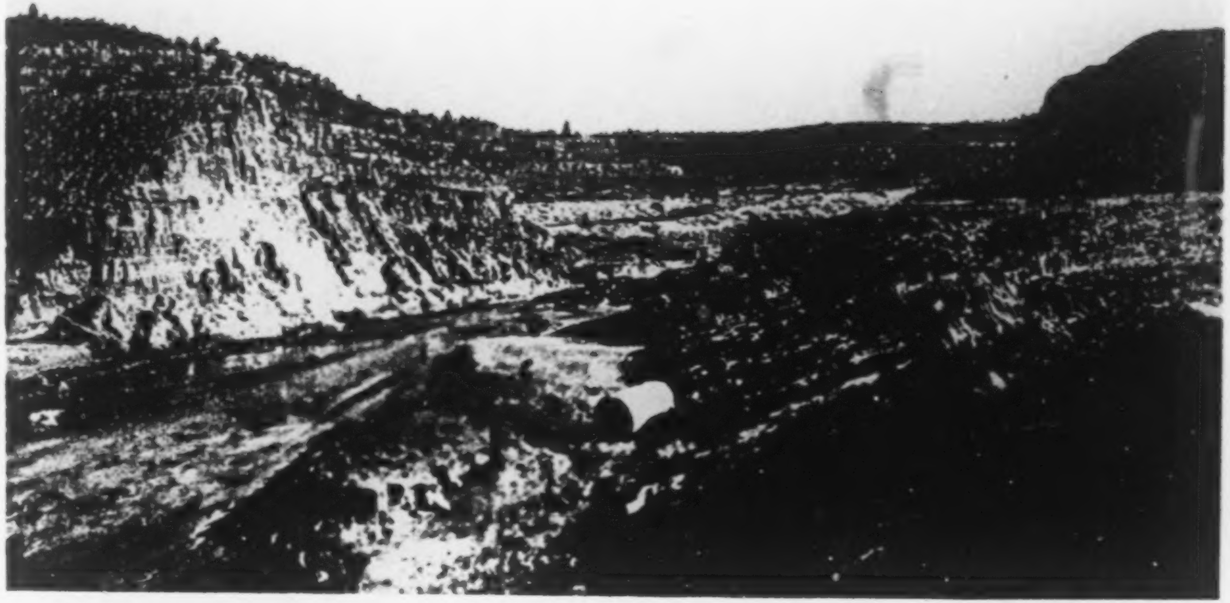

EXPLANATION

FIGURE 19



One of the Zuni dams in the Nutria drainage that failed in 1933. Record Group 75, Forestry Photographs, National Archives.

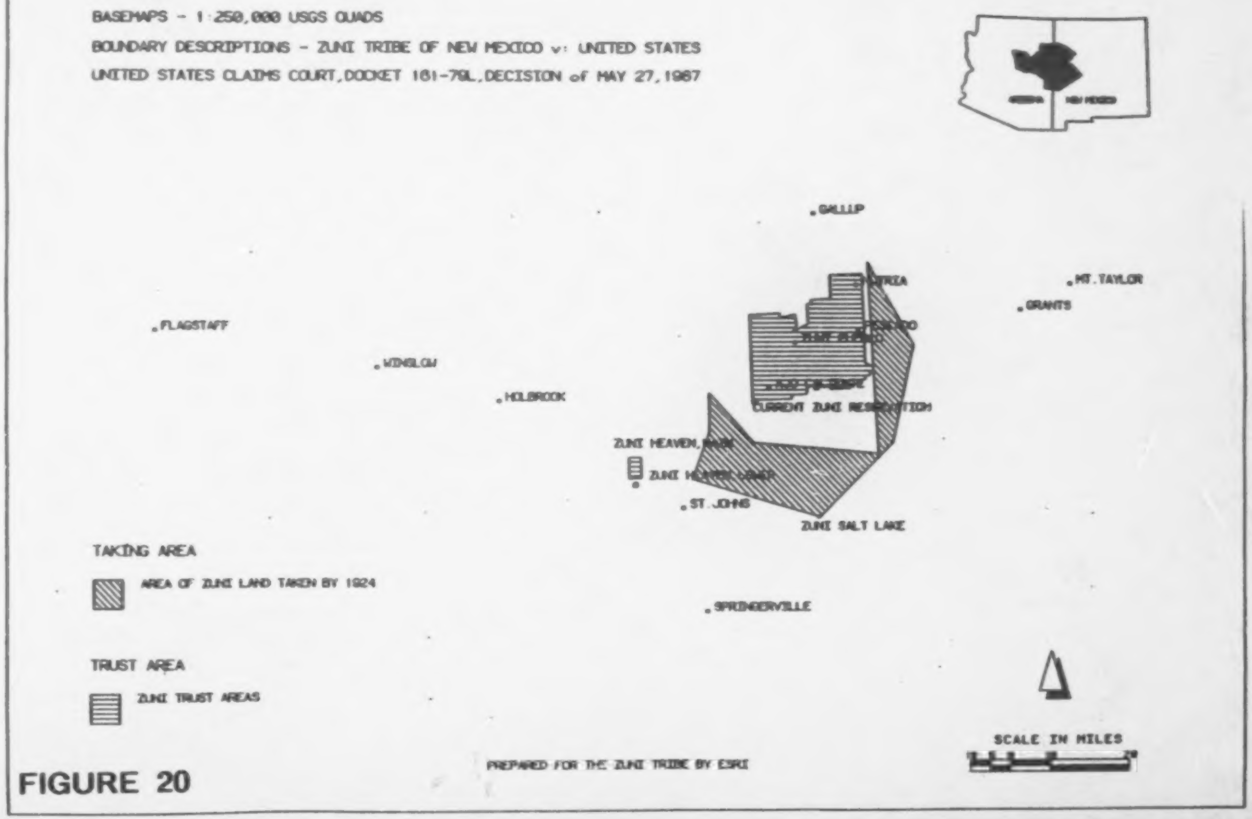
AREA OF ZUNI LAND TAKEN BY 1924

SOURCES:

BASEMAPS - 1:250,000 USGS QUADS

BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v: UNITED STATES

UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987


ARIZONA
NEW MEXICO
GALLUP
MT. TAYLOR
GRANTS
FLAGSTAFF
WINSLOW
HOLBROOK
CURRENT ZUNI RESERVATION
ZUNI HEAVEN, MAIN
ZUNI HEAVEN
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
▨ AREA OF ZUNI LAND TAKEN BY 1924
TRUST AREA
▤ ZUNI TRUST AREAS
SCALE IN MILES
0
20

PREPARED FOR THE ZUNI TRIBE BY ESRI

FIGURE 20

AREA OF ZUNI LAND TAKEN BY 1934

SOURCES:
BASEMAPS - 1:250,000 USGS QUADS
BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v: UNITED STATES
UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987

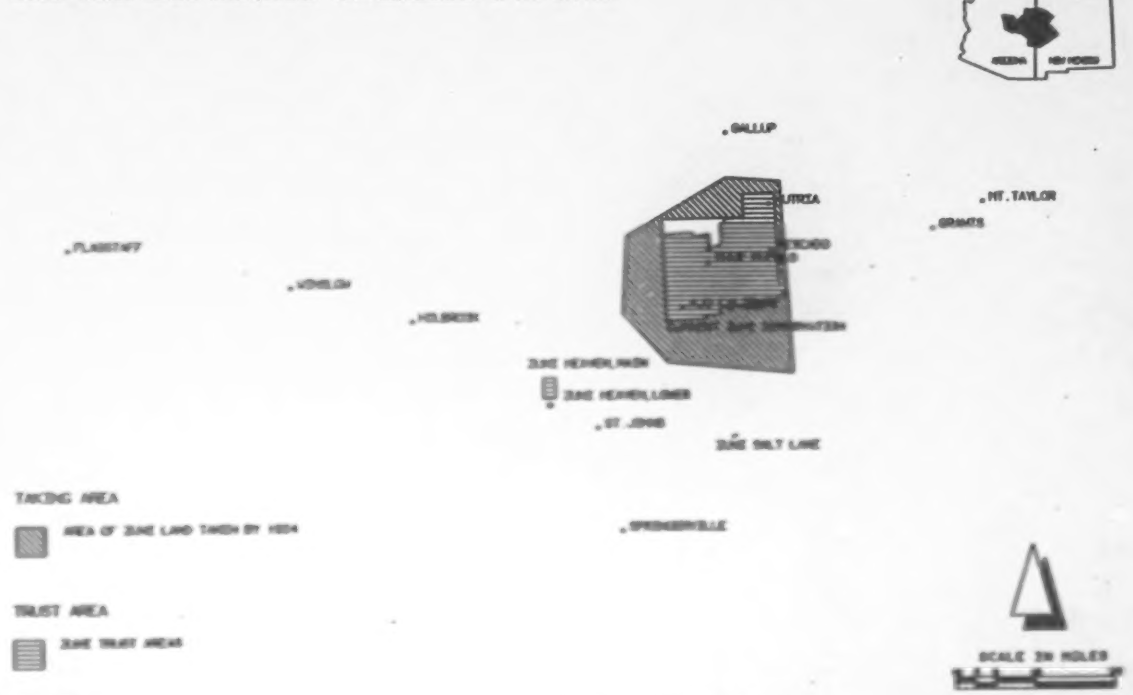

ARIZONA
NEW MEXICO
GALLUP
NUTRIA
MT. TAYLOR
GRANTS
FLAGSTAFF
WINSLOW
HOLBROOK
ZUNI HEAVEN, MAIN
ZUNI HEAVEN, LOWER
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
AREA OF ZUNI LAND TAKEN BY 1934
TRUST AREA
ZUNI TRUST AREAS
SCALE IN MILES

FIGURE 21

PREPARED FOR THE ZUNI TRIBE BY [illegible]

AREA OF ZUNI LAND TAKEN IN 1939

SOURCES:

BASEMAPS - 1:250,000 USGS QUADS

BOUNDARY DESCRIPTIONS - ZUNI TRIBE OF NEW MEXICO v. UNITED STATES

UNITED STATES CLAIMS COURT, DOCKET 161-79L, DECISION of MAY 27, 1987

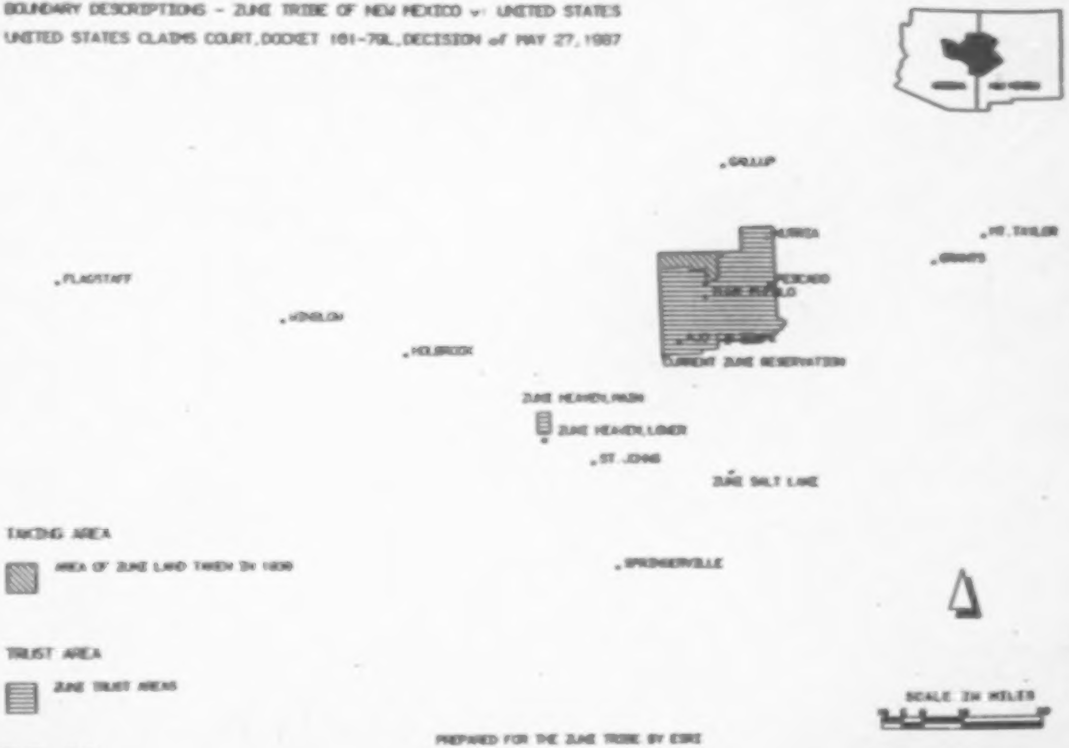

GALLUP
NUTRIA
PESCADO
ZUNI PUEBLO
OJO CALIENTE
CURRENT ZUNI RESERVATION
MT. TAYLOR
GRANTS
FLAGSTAFF
WINSLOW
HOLBROOK
ZUNI HEAVEN, MAIN
ZUNI HEAVEN, LOWER
ST. JOHNS
ZUNI SALT LAKE
SPRINGERVILLE
TAKING AREA
AREA OF ZUNI LAND TAKEN IN 1939
TRUST AREA
ZUNI TRUST AREAS
SCALE IN MILES
PREPARED FOR THE ZUNI TRIBE BY ESRI

FIGURE 22

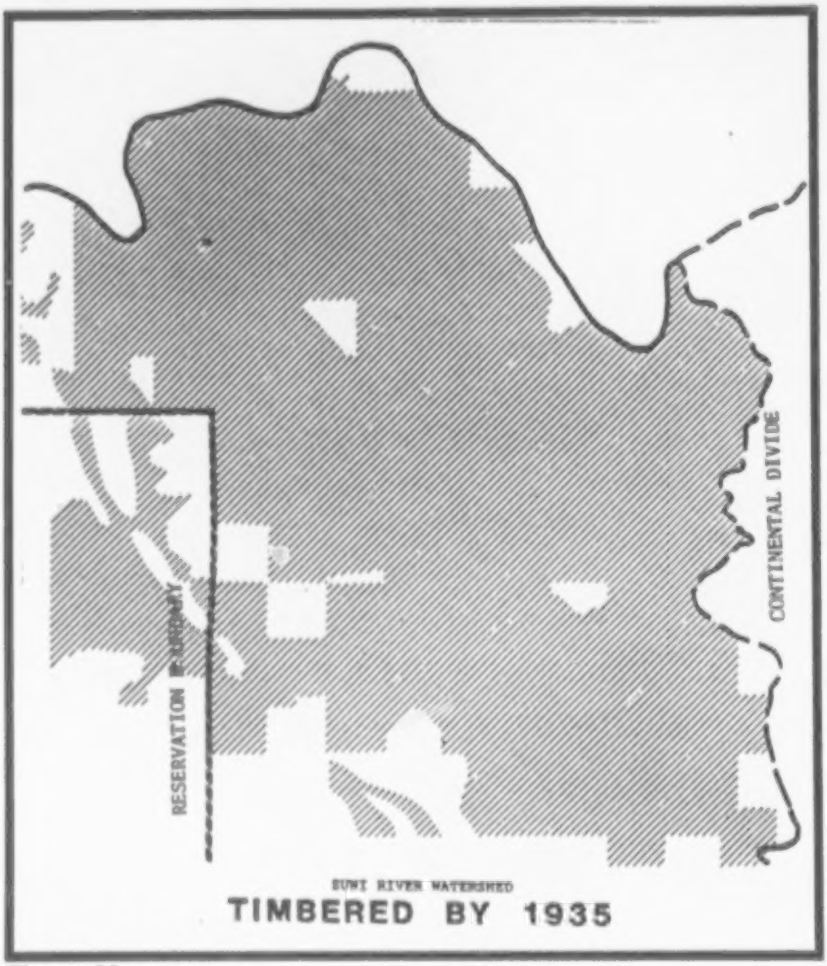

RESERVATION BOUNDARY
CONTINENTAL DIVIDE
ZUNI RIVER WATERSHED
TIMBERED BY 1935

Figure 23.

This map indicates the lands that were cut over by loggers between 1880 and 1935, as determined from timber sales records and photointerpretation. The interrupted line is the Continental Divide, and the continuous line represents the extent of the Zuni River watershed. The diagonally hatched line is the boundary of the Zuni Indian Reservation.

damaged watershed and other government acts upon the Zuni Reservation (Figures 24 and 25).

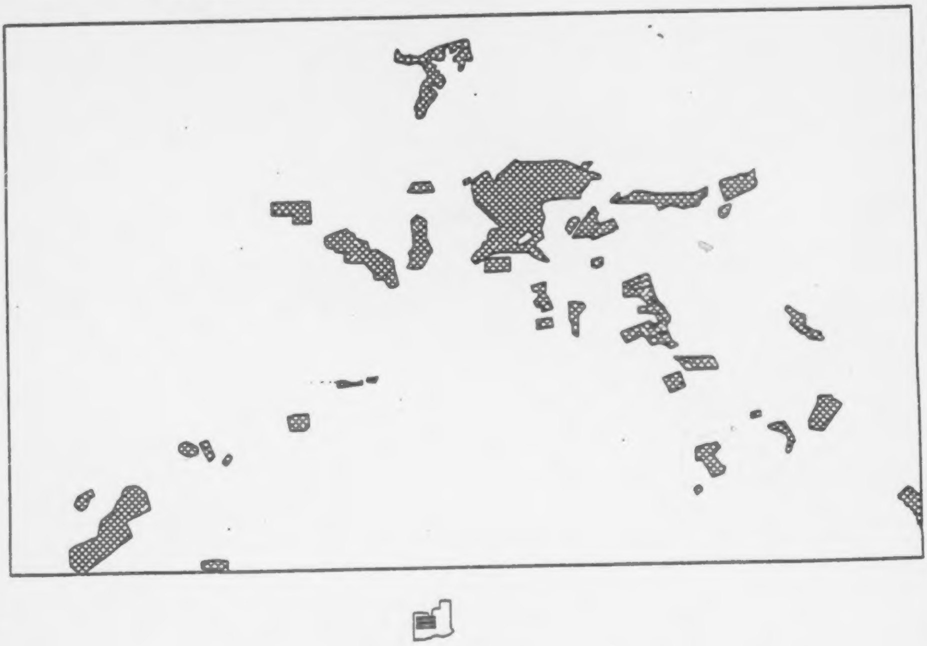
2. Water

One of the first settlements of non-Indians within the Zuni traditional territory was made in the 1870s by a colony of Mormons who established the farming town of Ramah just to the east of the Zuni farming village of Pescado. In 1898 they began construction on a dam to impound the waters of the Pescado tributary of the Zuni River in what at that time was an immense reservoir. After raising the height of the dam between 1901 and 1903, the reservoir came to have a capacity of 13,500 acre feet. It was not until 1920 that the Mormon cattle company sought a formal water right from the New Mexico State Engineer's office.

Zuni had been using the water in the Pescado drainage for the irrigation of cultivated fields for centuries. The Indian Department was well aware of this fact and protested against the pending application for a water right, noting that the Zunis had a prior right to all of the water in its drainage. The government irrigation supervisor on the Zuni Reservation notified all parties, including the State Engineer's office, that Zuni "has claimed and does claim all of the normal and flood flow of the Zuni River and its tributaries either within or without the boundaries of the Zuni Indian Reservation," and cited the authority of the United States to back his claim, which had been approved by the Commissioner of Indian Affairs. However, the government did not follow up its protest and a water right was issued to the Ramah irrigation company in 1923. The water in the Pescado drainage continues to be diverted from Zuni use into the Ramah reservoir, ZUNI AGRICULTURAL FIELDS IDENTIFIED IN 1911-12 ON TEKAPO and ZUNI QUADS ON THE ZUNI INDIAN RESERVATION NEW MEXICO

FIELD LOCATIONS INTERPRETED FROM 1911-12 GENERAL LAND OFFICE SURVEYS BY THE ZUNI ARCHAEOLOGY PROGRAM. MAPS PREPARED BY ESRI UNDER CONTRACT WITH THE INSTITUTE OF THE NORTH AMERICAN WEST IN BEHALF OF THE ZUNI INDIAN TRIBE FOR USE WITH EXPERT TESTIMONY IN THE UNITED STATES CLAIMS COURT (DOCKET 327-81L).

▨ ZUNI AGRICULTURAL FIELD 1911-12



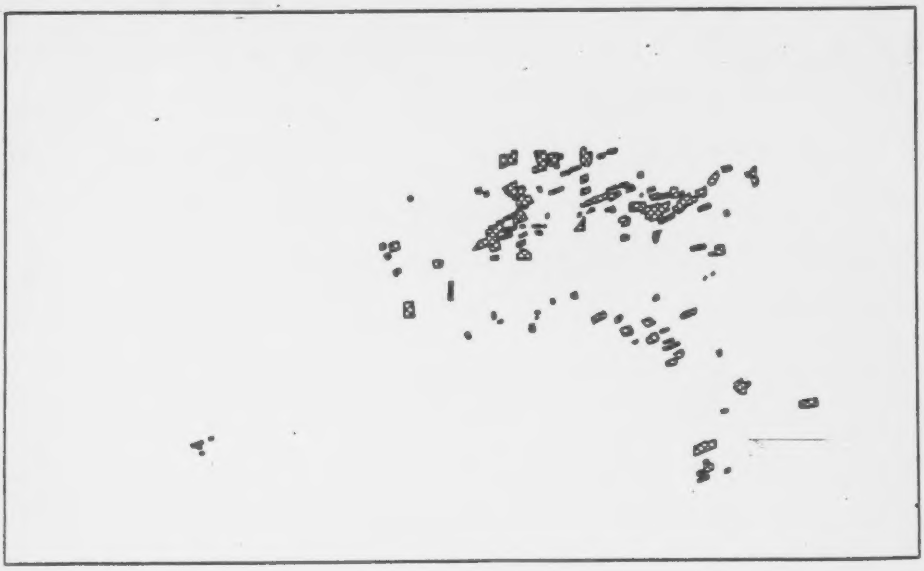
PILOT STUDY AREA ON
ZUNI INDIAN RESERVATION
NEW MEXICO

FIGURE 24

ZUNI AGRICULTURAL FIELDS IDENTIFIED IN 1987-88 ON TEKAPO and ZUNI QUADS ON THE ZUNI INDIAN RESERVATION. NEW MEXICO

FIELD LOCATIONS INTERPRETED FROM 1987-88 GENERAL LAND OFFICE SURVEYS BY THE ZUNI ARCHAEOLOGY PROGRAM. MAPS PREPARED BY ESRI UNDER CONTRACT WITH THE INSTITUTE OF THE NORTH AMERICAN WEST IN BEHALF OF THE ZUNI INDIAN TRIBE FOR USE WITH EXPERT TESTIMONY IN THE UNITED STATES CLAIMS COURT (DOCKET 327-81L).

▩ ZUNI AGRICULTURAL FIELD 1987-88



PILOT STUDY AREA ON
ZUNI INDIAN RESERVATION
NEW MEXICO

FIGURE 25

which impounds it for non-Zuni agricultural use.

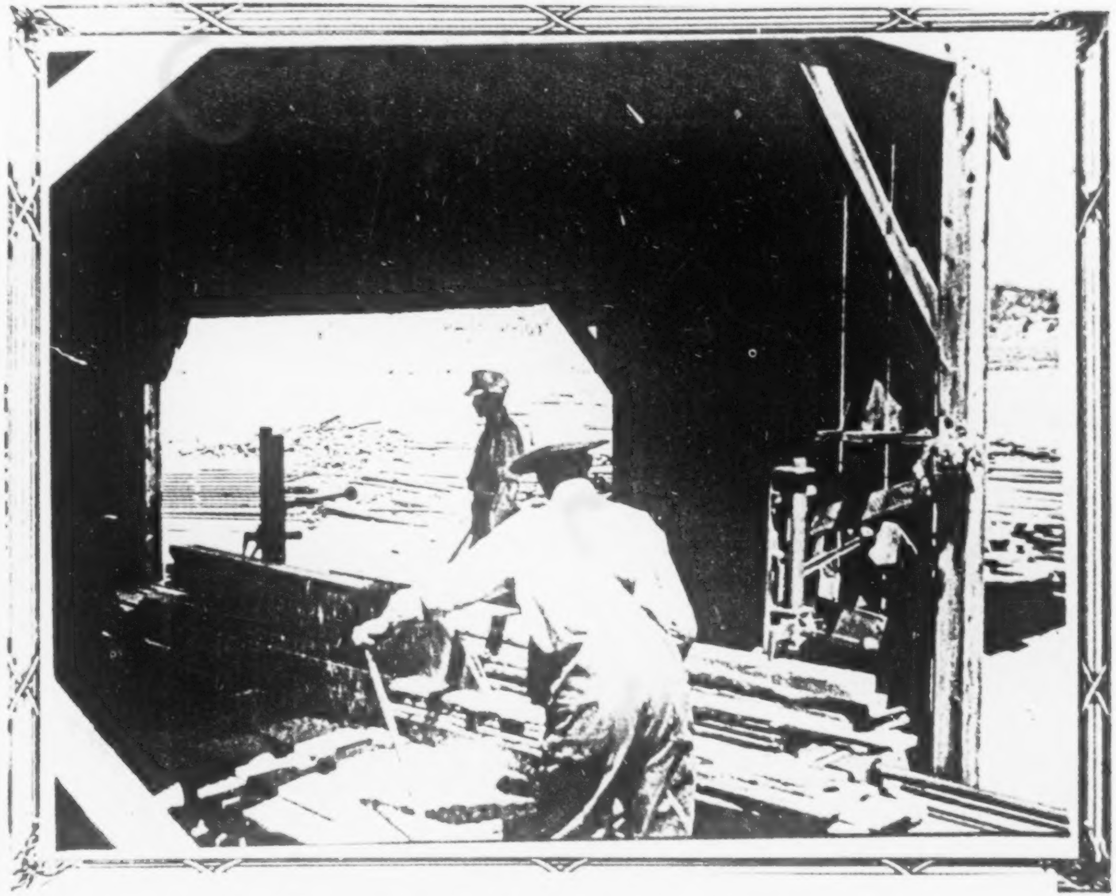
3. Reservation Timber

Between 1910 and 1946 the government operated a sawmill on the Zuni Reservation (Figure 26). Although agency officials failed to keep adequate records, or at times any records at all, it is clear that over the years millions of board feet of lumber were cut from timbered lands on the reservation without payment to the tribe. Most of this timber was cut in the Nutria area, but that area was damaged by improper logging practices, the agency sawmill was moved first to Pie Mesa, and then again to a location amidst the thick timber in the Miller section of the reservation. Analysis of aerial photography taken in 1935 (at roughly the time the agency sawmill was moved as a result of damage in the watershed), indicates that at least 2,560 acres was cut over in that area alone.

4. Salt

Since Coronado visited the Zuni villages in 1540, the white, pure salt of the Zuni Salt Lake has had a fabled reputation. Its commercial value was recognized centuries ago, and salt from the lake was an important trade item for the tribe until the early 20th century, when the government allowed non-Zunis to enter into commercial operations at the lake (Figure 27). In the early 1970s the Tribe used hard-gained tribal funds to lease their own lake and protect it and the salt that annually rises out of the unique saline springs that feed the lake. In 1978 Congress

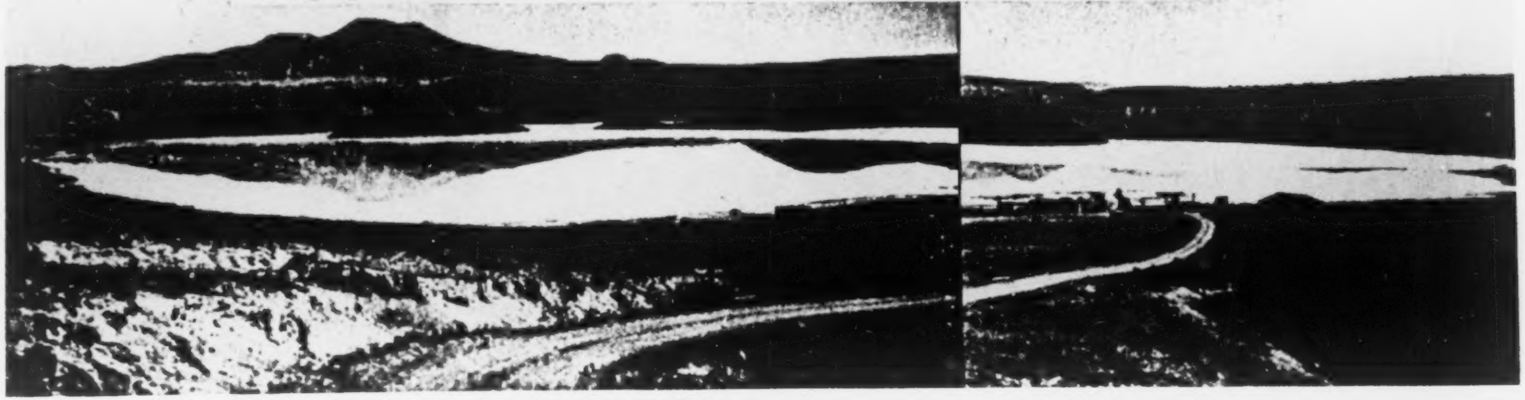
FIGURE 26



Operation of BIA sawmill on the Zuni Reservation in 1932. Photography by R. D. Holtz,

FIGURE 27

Photograph from BIA Annual Forestry Report for 1939, courtesy Zuni Tribal Archives.



Salt Lake

Location- 60 miles south of Zuni,
1,000,000 to 2,000,000 pounds of salt removed annually
Lake located on state land and operated by leasee
Lake orginated from volcano crater, which apparently gives salt supply.
Practically all salt used by Zunis, domestically and for stock is obtained here.
Zunis conduct religious c eremonies when taking salt out of lake
Salt sold at 30¢ per hundred pounds.

recognized Zuni's aboriginal title to those lands and a deed was recently provided to the Tribe for the section of land on which the lake is located.

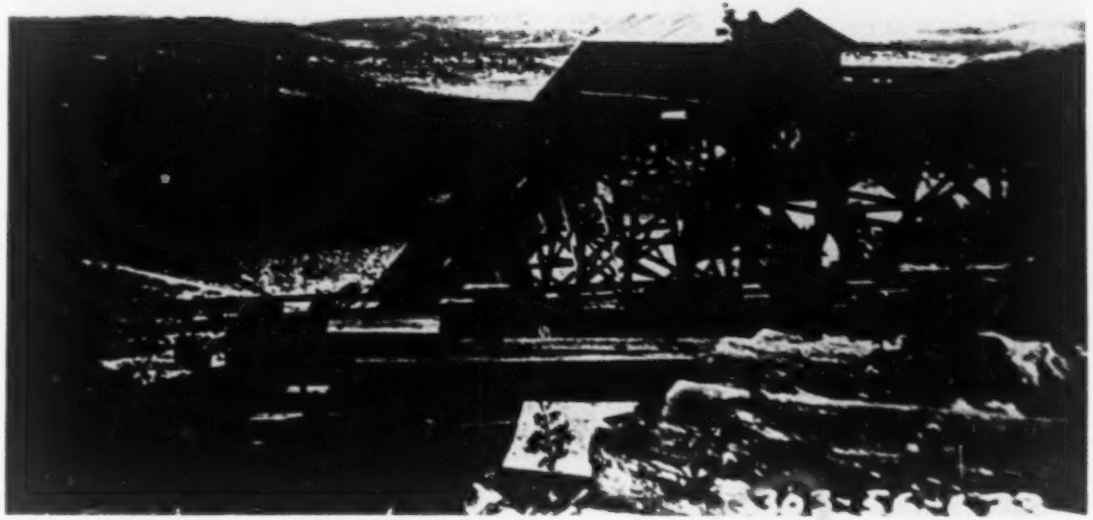
5. Coal

Between 1908 and 1946 tens of thousands of tons of coal were mined on the Zuni Reservation by the United States government, but without payment to the Tribe (Figure 28). In 1908 the first mine was authorized. It was abandoned when veins of coal played out in 1914, and a second mine was opened. A third mine also operated for a period of time. The documentary record suggests that during the period from 1907 to 1937 between 50,000 and 70,000 tons of coal were mined on the reservation without any payment to the Zunis. Today the improperly managed coal tailings from of these mines continue to damage a portion of the Nutria watershed.

6. Trespass

From the time of the establishment of the Zuni Reservation in 1877 until 1946, consistent, widespread and notorious trespass took place on areas of the reservation. At one point, the government even allowed non-Zunis to make homesteads on Zuni trust land. Many thousands of acres of Zuni grazing land were either temporarily overgrazed, damaged, or restricted from Zuni use as a result of this trespass. White ranchers not only illegally grazed their stock on the reservation, they were allowed to use the reservation as a drive-lane for moving stock, with full

FIGURE 28



One of three Zuni coal mines, from which thousands of tons of coal were taken without any payment to the Tribe. Photograph courtesy Bureau of Indian Affairs, Zuni Agency, Forestry Office, 1956.

knowledge of government officials. As late as the 1940s, government officials admitted that they had not reported all of the trespass that was going on, for fear they would have been criticized for not stopping that trespass.

7. Damage to Archaeological Sites

Between 1916 and the present, Bureau of Indian Affairs road-building operations have damaged nearly 2,000 archaeological sites on the Zuni Reservation. Graves have been unearthed, ancient cities plowed with bulldozers, and the cultural heritage of the Zuni people despoiled by construction practices that are illegal under the laws of the United States.

8. Appropriation of Zuni Land for Non-Zuni Use

During the past century the U. S. government has not only allowed, but at times has even encouraged the appropriation of Zuni Trust land for non-Zuni use. Land has been given to traders, missionaries, churches, and myriad government facilities without payment to the tribe. Land has been appropriated without payment for the purposes of roads, reservoirs, and rights-of-way without payment to the tribe.

II. Value of Damage to Zuni Trust Lands

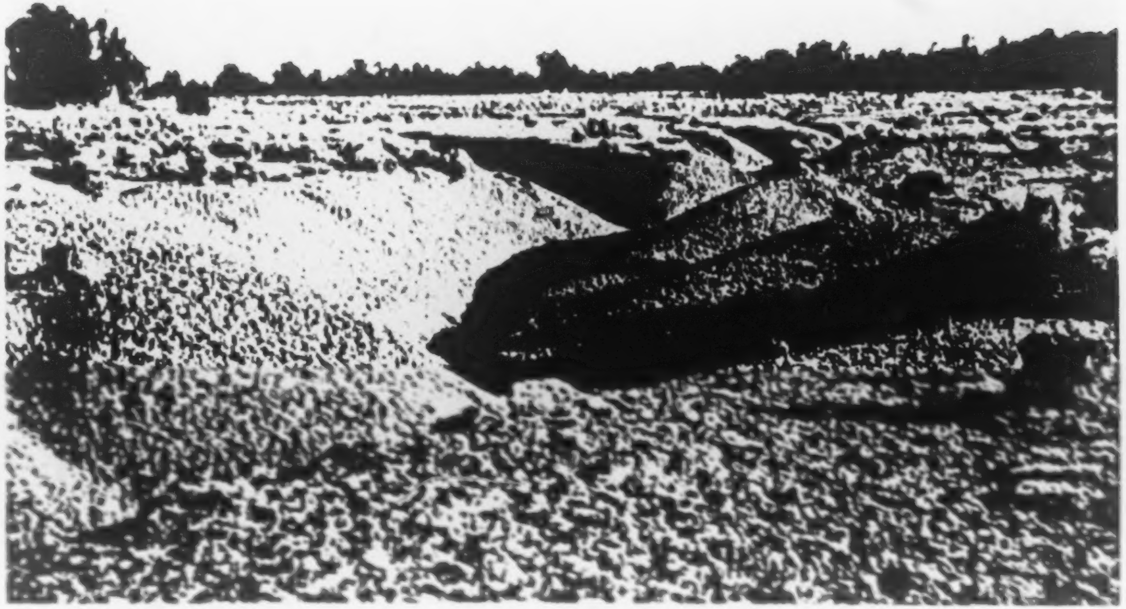
1. Lands Lost Due to Erosion and Other Causes

The total value of all damages sustained to the Zuni Reservation as a result of erosion that has occurred due to over-grazing, cut-over timber lands, and the improper construction and maintenance of dams would be very high and difficult to ascertain (Figure 29). However, a tabulation of the value of the prime agricultural lands that have either been damaged by erosion or appropriated for non-Zuni use, can provide a conservative indication of the damages to trust lands due to erosion (Figure 30). Again using a conservative estimate, this time of the extent of the acreage involved, and multiplying it by the market value of like lands in the vicinity of the reservation, a total value of damage in this category can be obtained (Figure 31). For purposes of this testimony a total of 11,000 acres (which may be much less than the actual acreage damaged) is multiplied by $1,666.67 (the price the Zuni Tribe recently paid per acre for like lands on the Little Colorado in 1987) to reach a total of $18,333,333.00 (Figures 32 and 33).

2. Water

The Ramah Reservoir was built at the turn of the century with a capacity of 13,500 acre/feet. The water that has been impounded by that reservoir for 90 years has been removed

FIGURE 29



Gully Erosion
Caused by heavy use and stock trailing.

Photograph courtesy Zuni Tribal Archives 1930

FIGURE 30

Eroded arroyo in Nutria Canyon: "Depth 40' 3"; Width 56' 3". Due to heavy use of Nutria Canyon and clear cutting of timber on adjacent private lands. BIA Annual Forestry Report for 1939, Zuni Tribal Archives.

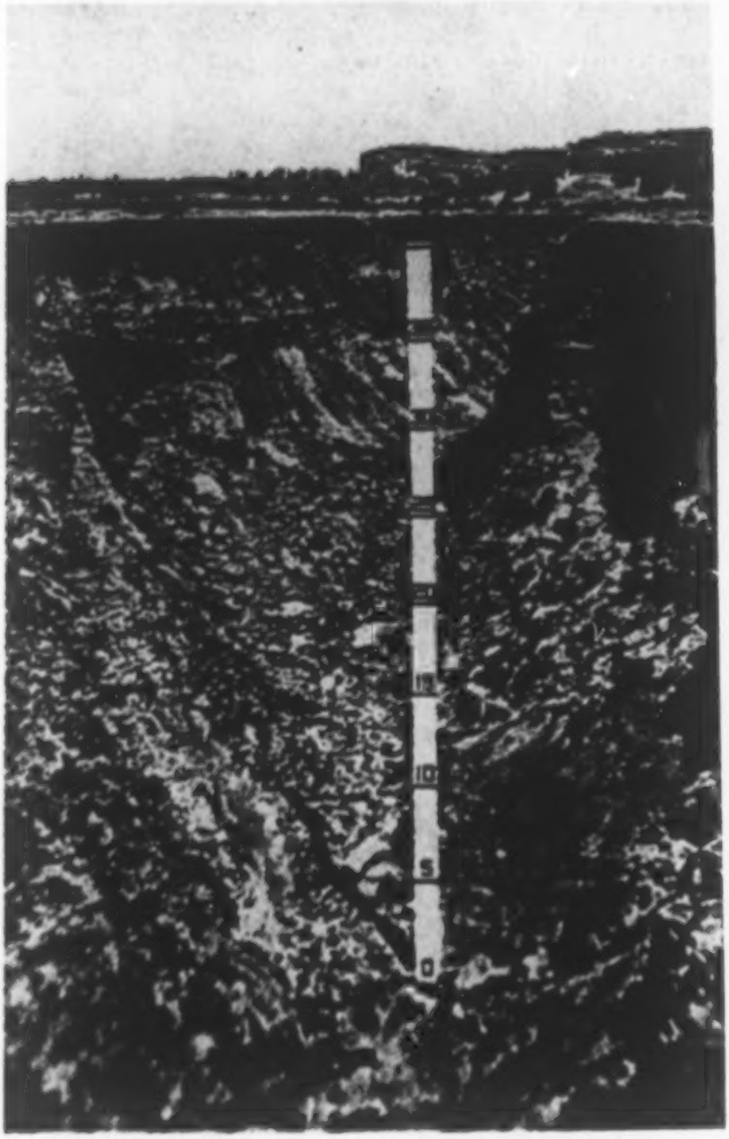


FIGURE 31 Erosion caused by a recently-constructed spillway at Nutria, 1933-1935. Photograph by Mrs. Ellis F. Neilson, courtesy the Zuni Tribal Archives.

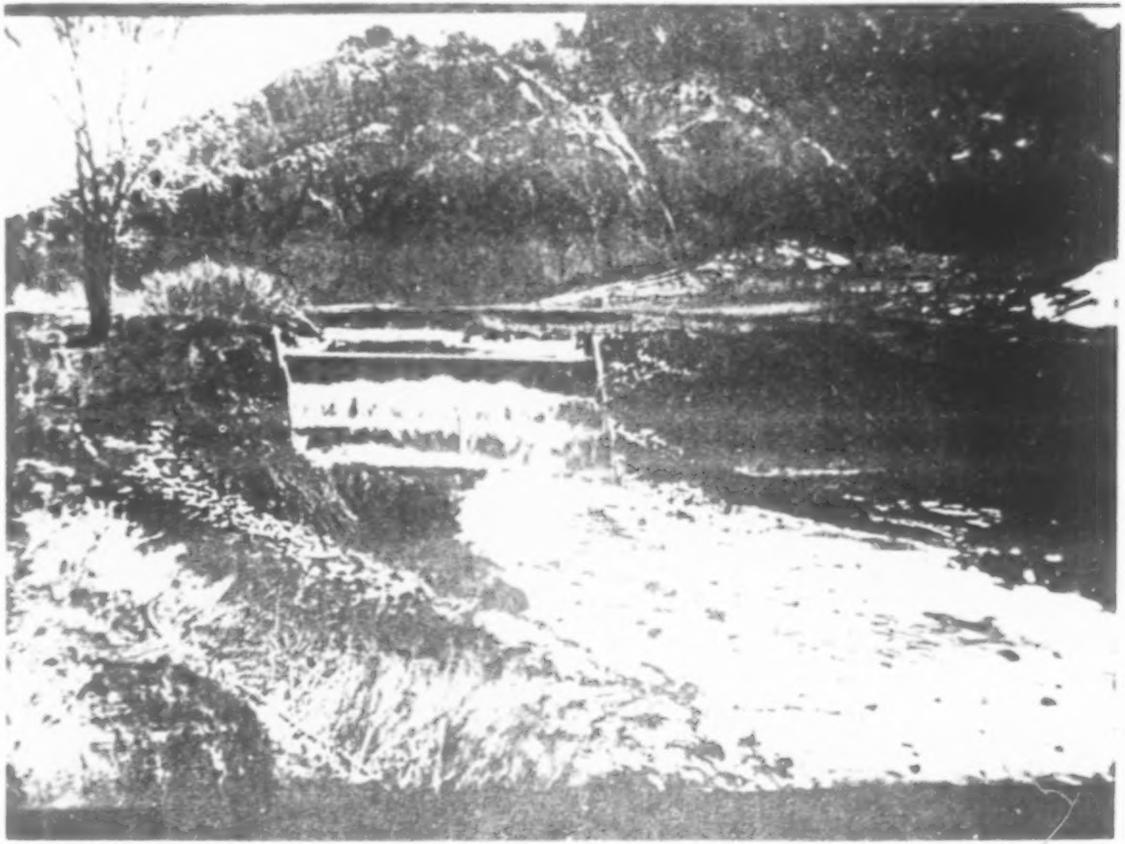
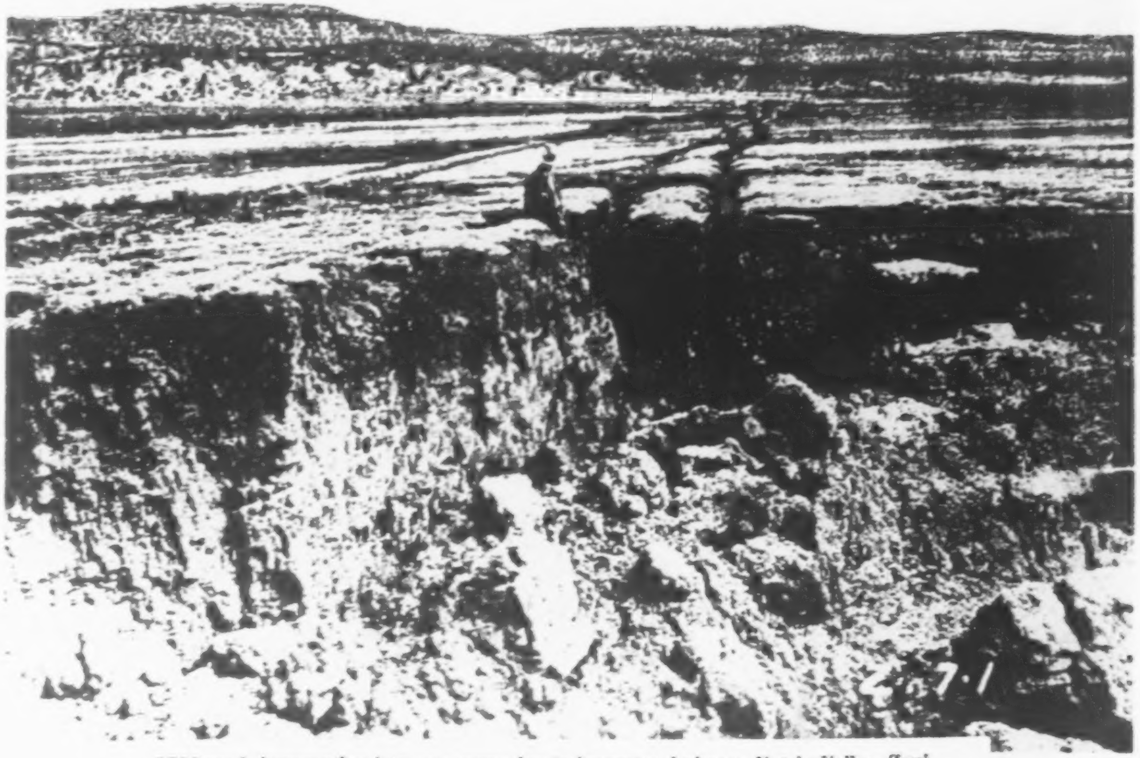


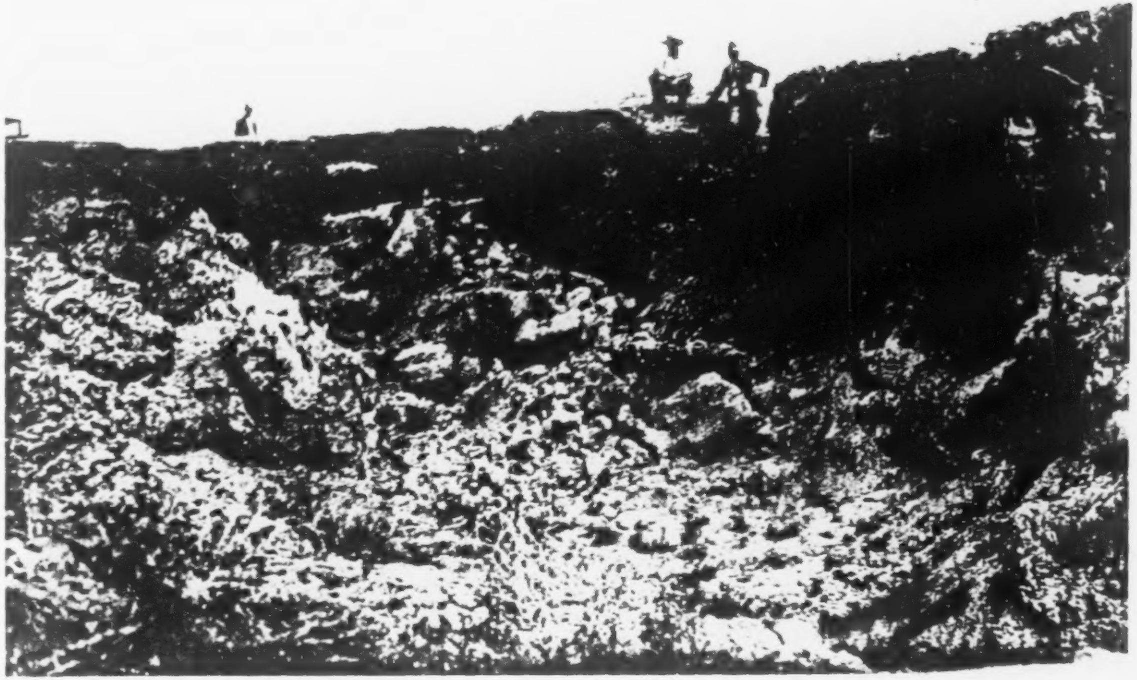
FIGURE 32



"Old road degenerating into an arroyo due to improper drainage, Nutria Valley, Zuni Indian Reservation " 1930 Record Group 75 Forestry Photographs: National Archives

FIGURE 33

Officials examine erosion in a wagon track along the Gallup Road in the Nutria Valley, July 9, 1930. Record Group 75, Forestry Photographs, National Archives.



from Zuni use. In 1965 the Bureau of Indian Affairs investigated two newly built reservoirs with a total capacity of 2,900 acre feet and concluded that they were diverting water from Zuni use. They also estimated the total crops that could be grown with that amount of water and concluded that the value of the water per year was between $75,000.00 and $150,000.00. Averaging that amount to $100,000.00 a year and multiplying it for the years between 1978 and the present brings a total of $1,000,000.00 for those two reservoirs. The Ramah capacity is 4.6 times as large as that of the two smaller reservoirs. Thus for the years since 1965, damages from lost Ramah water would total $4,600,000.00. If the average value of the Ramah water during the years 1898 to 1965 was only 10% of what it was in 1965 then the total damages for those years would be $3,122,200.00. Assuming an average taking date of 1931 on the earlier Ramah damages, and multiplying the total by 5% a year for interest, an additional $8,898,270.00 must added to the total. Interest on the damages from Ramah water lost from 1965-1988, figured similarly would total $2,760,000.00. Interest on the later damages from the recently built two reservoirs would total $500,000.00. Damages from lost water figured in this manner would thus total $20,880,470.00.

3. Salt

Approximately 79,000 tons of salt were extracted from the Zuni Salt Lake between 1905 and 1946. In 1941 the Zunis were charged $.35 for 100 lbs. At this rate the value of the salt taken from the Zuni Salt Lake without payment to the Tribe totals $553,000.00. Using an average taking date of 1925, and multiplying 5% times 63 years, then multiplying the total times the $553,000.00 provides a total of interest from the damages of $1,741,950.00. The total of the damages due to lost salt plus interest is $2,294,950.00. The Tribe also paid $250,000.00 for a lease to their own lake in about 1975. If this amount plus interest on that amount at 5% a year for ten years is added to the earlier total, a grand total of damages related to salt equals $2,669,950.00.

4. Coal

A conservative estimate of the total coal removed from Zuni mines between 1907 and 1937 without payment to the Zuni Tribe is 60,000 tons. In 1937 that coal was being sold by the government at $3.50 a ton. At that rate the total value of the coal taken without payment would be $210,000.00, with an average taking date of 1922. Multiplying $210,000.00 by 5% 66 times for interest brings an additional total of $693,000.00. A total of interest and damages from lost coal is $903,000.00.

5. Archaeology

In a separate report, relying on the state of the art methodology of determining value, Mr. T. J. Ferguson has estimated conservatively that damage to archaeological sites on the Zuni Reservation due to improper government construction activities totals $5,000,000.00.

6. Trespass

It is difficult to ascertain a value for the continued trespass of stock on the Zuni Reservation from 1877 through 1946, but if a value of only $500/year is fixed, the total is $34,500.00. Interest at 5% for 77 years since the average taking date of 1911 would total another $132,825.00. Using these calculations the damage due to trespass would total $167,325.00.

7. Timber

Relying on analysis of aerial photography to achieve a figure of 2,560 acres cut over in the Nutria area on Trust lands by 1935, and then figuring that only 75% of the timber was used for government purposes, a total of 1,920 acres is reached. The Zuni Mountain Land and Lumber Company estimated that like, adjacent non-reservation lands had 10,000 board feet of merchantable lumber per acre. Multiplying 1,920 times 10,000 brings a total of 19,200,000 board feet of lumber. Using these calculations the value of the timber cut by the government without payment to the tribe can be reached by multiplying the total times $2.00 per 1,000 board feet (a conservative estimate of its value at the time). Multiplying $2.00 times 19,200 M feet provides a total of $38,400.00 (for the lands in the Nutria area alone). With an average taking date of 1928, and multiplying the total times the interim number of years (60) times 5% brings a total of $115,200.00 in interest. These calculations provide a total value of damages for reservation timber in the Nutria area of $153,600.00.

8. Total Value of Damages

Using the above calculations, the value of the total damages that the have been sustained to Zuni Trust Lands since 1846 (and excluding damages which had their beginnings during the years 1946 and 1978) can be tabulated as follows:

Lands Lost Due to Erosion and Other Causes	$18,333,333.00
Water	20,880,470.00
Salt	2,669,950.00
Coal	903,000.00
Archaeology	5,000,000.00
Trespass	167,325.00
Reservation Timber	153,600.00
Total Value	$48,107,678.00

III. The Zuni Resource Development Plan

Zuni traditional religion, philosophy and actual land-use methods all emphasized using only those natural resources that were actually needed. In Zuni society, industriousness, hospitality, and moderation are highly admired values, so it is no surprise that those same terms have been used by others so frequently over the past centuries to describe the Zuni Tribe. Over and over, visitors have described Zunis as hard-working, religious and hospitable. My experience with the tribe, over a period of some twenty years, also leads me to the same characterization of Zuni culture.

About a century and a half ago, when United States troops first marched into Zuni territory, they found a prosperous trading and agricultural people, who had over 10,000 acres of corn in cultivation, and harvested enough crops to supply their new allies in Fort Defiance with all the food that was necessary for the troops and their horses. The reason for their success was due not only to their industry, their sharp trading, their well-organized political and military capabilities, but also to a complex system of dealing with their environment. Potential erosion was controlled with the same techniques by which crops were cultivated. The Zunis' agricultural technology was tested over centuries, and combined with their encyclopedic knowledge of the landscape, enabled them to make the best use of the excellent soil in their valleys, though most of the water that they had available during their relatively short growing season came in the form of floodwater run-off.

Where there were permanent supplies of water, the Zunis had farming villages with systems of small diversion dams and reservoirs, and canals to feed the crops. Specialty crops, like beans, onions, and cotton were cared for meticulously in "waffle-gardens" along the Zuni River, where the alluvial aquifer provided well-water a few feet from the surface of the ground, even in dry years. After the Spanish arrived in the 16th century, the Zunis also cultivated peach orchards on benches along the edges of their mesas. But these farms and gardens were not sufficient to provide for all the needs of the Zunis. In addition, the Zunis cultivated vast tracts of land along the streambeds (or "arroyos") that drained the Zuni Mountains and the mesas and plateaus surrounding their villages.

Check dams constructed in the arroyos served not only to spread water out into fields to irrigate corn, but provided nutrients to the crops, in the form of silt found in solution in the floodwater (Figure 34). The check dams also protected the arroyos from erosion. Silt backed up behind the literally thousands of dams throughout the tributary system prevented incision in the streambed, or filled incipient erosion with silt (Figures 35, 36, 37, and 38). Zuni farmers also guarded against wind erosion by planting rows of perennial species where they could serve as windbreaks. Many thousands of acres of land were cultivated using this floodwater technology. Historical records indicate that the Zunis maintained a two-year supply of corn in case of drought, and that they usually harvested enough corn that they were able to trade an ample supply to their neighbors.

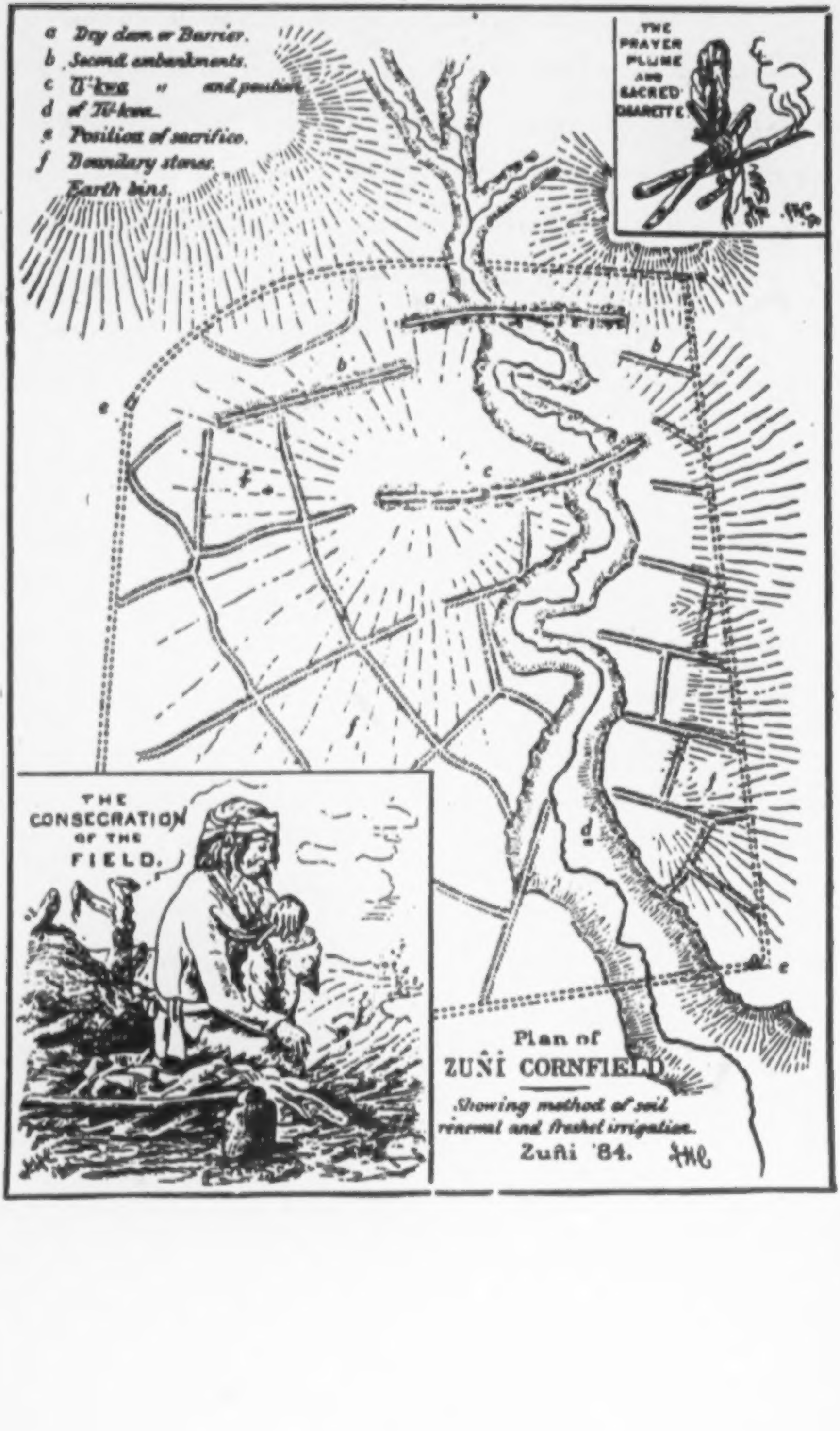
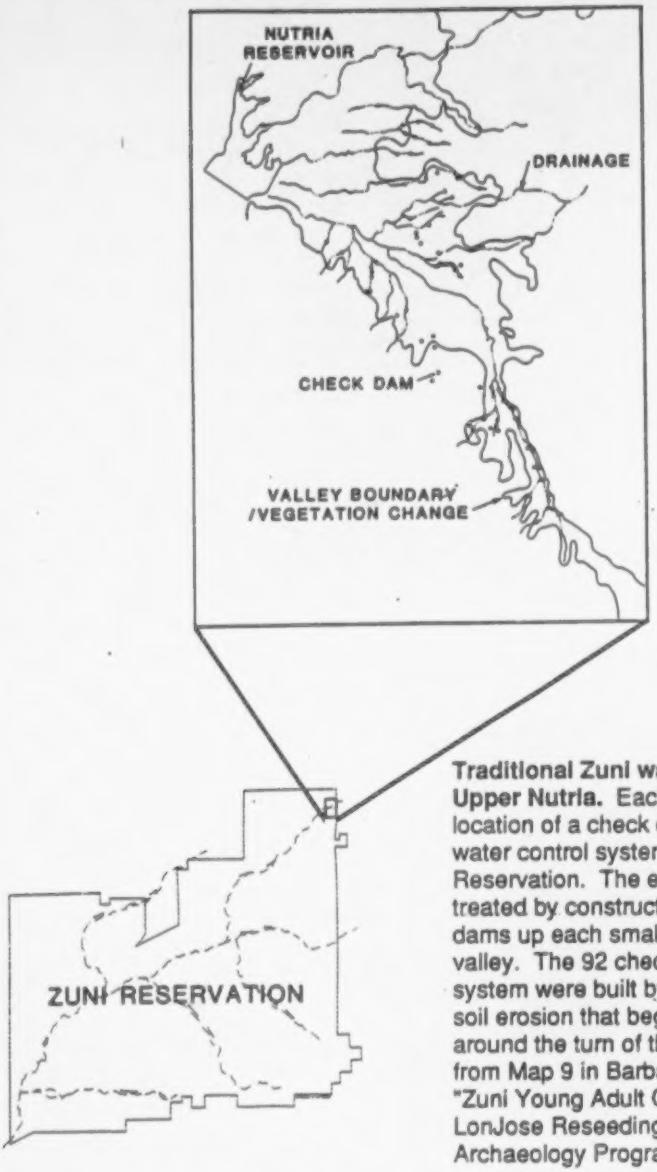

a Dry dam or Barrier.
b Second embankments.
c U'-kwa " and position
d of Tö'-kwa.
e Position of sacrifice.
f Boundary stones.
Earth bins.
THE PRAYER PLUME AND SACRED CIGARETTE
THE CONSECRATION OF THE FIELD.
a
b
b
c
d
e
e
f
f
Plan of ZUÑI CORNFIELD
Showing method of soil renewal and freshet irrigation.
Zuñi '84.
FHC

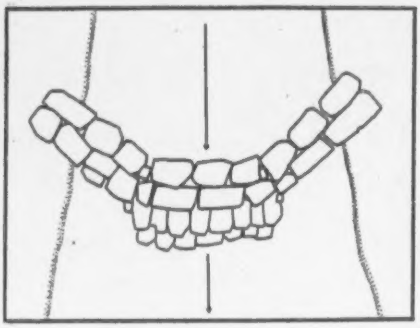
FIGURE 34

"Plan of a Zuni Cornfield," 1884; Plate II, from *Zuni Breadstuff* by F. H. Cushing (Museum of the American Indian, 1920).

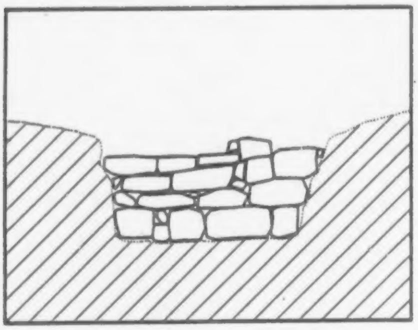

NUTRIA RESERVOIR
DRAINAGE
CHECK DAM
VALLEY BOUNDARY /VEGETATION CHANGE
ZUNI RESERVATION

Traditional Zuni water control in Upper Nutria. Each dot represents the location of a check dam in a traditional water control system on the Zuni Reservation. The entire watershed was treated by constructing a series of check dams up each small drainage in the valley. The 92 check dams in this system were built by Zunis to control the soil erosion that began in the area around the turn of the century. Adapted from Map 9 in Barbara J. Mills, 1979, "Zuni Young Adult Conservation Corps, LonJose Reseeding Project," Zuni Archaeology Program Report No. 61.

FIGURE 35

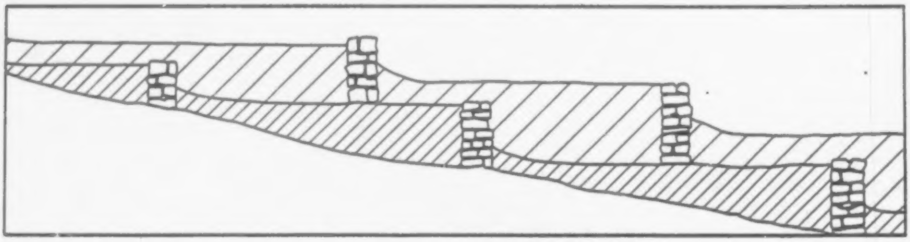


PLAN VIEW



CROSS SECTION

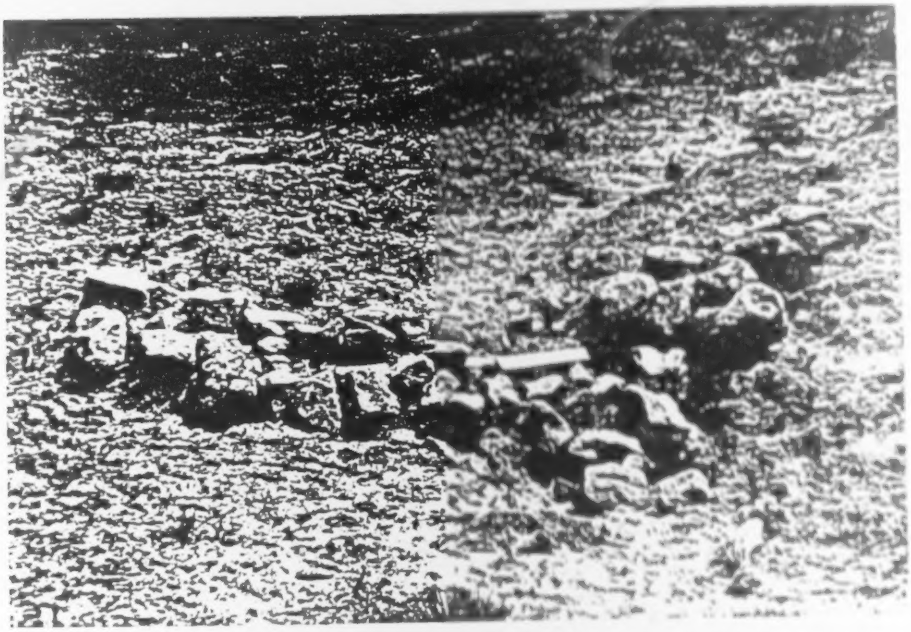
Schematic drawings of Zuni check dams. Zuni check dams are constructed in eroded stream channels to slow water down and trap sediment. The dams are small structures, usually only several feet high, and built from rock, brush, and earth. When constructed in a series, the dams work together to collect soil behind them. If additional dams are constructed between the original dams, it is possible to gradually fill up an eroded drainage. The key to successful water control using traditional technology is continual construction and reconstruction of devices in response to small changes in the surface flow of water.



LONGITUDINAL CROSS SECTION

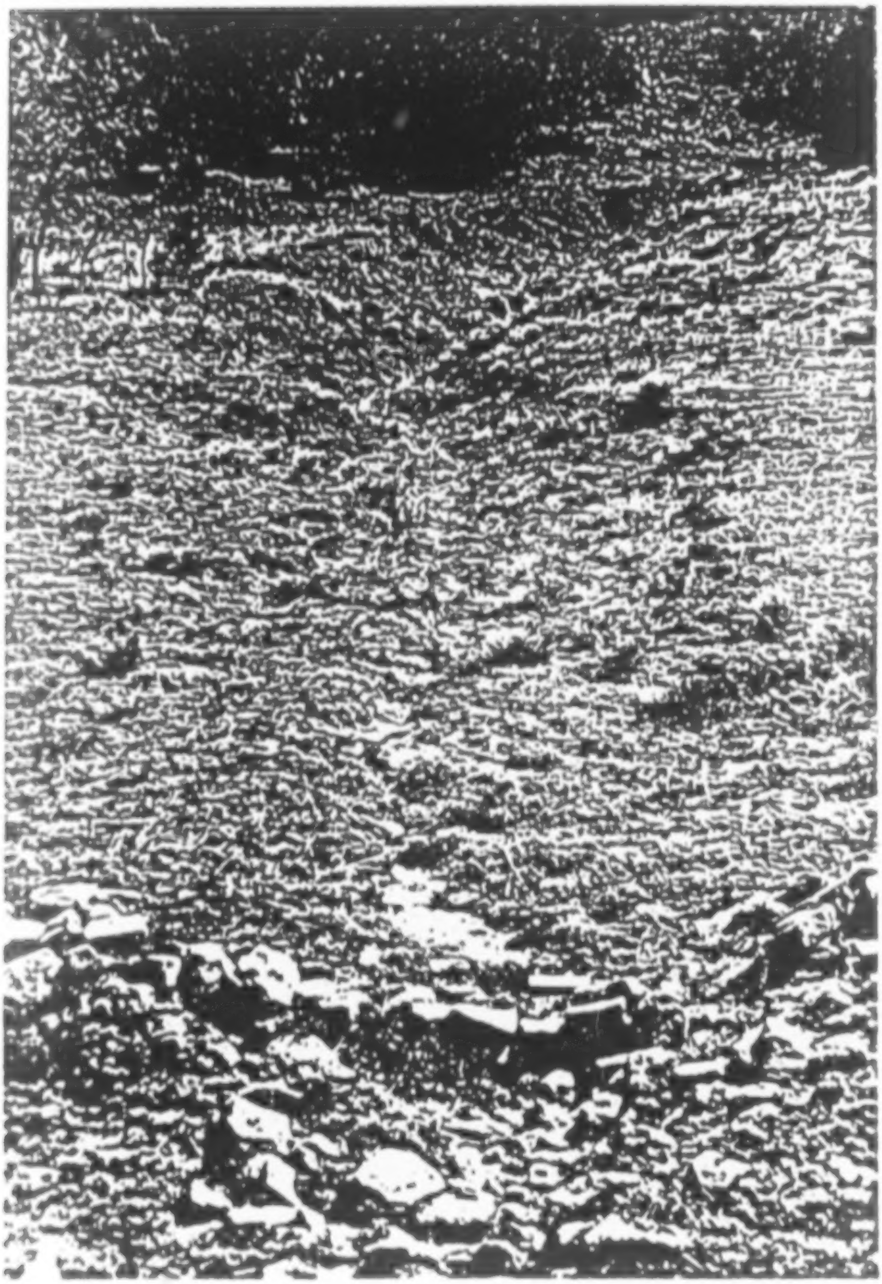
FIGURE 36

Zuni erosion control in Upper Nutria. This brush and rock structure is designed to prevent erosion at a headcut. Photo by Barbara J. Mills, 1979, courtesy Zuni Archaeology Program.



Zuni check dam in Upper Nutria. By trapping and retaining [illegible] sediments, this simple rock device provides an effective [illegible] erosion control using low–cost, readily available materials. Photo by Barbara J. Mills, 1979, courtesy Zuni Archaeology Program.

FIGURE 37



Zuni check dam in Upper Nutria. This simple structure controls erosion where a stream flows into the valley from the adjacent uplands. Photo by Barbara J. Mills, 1979, courtesy Zuni Archaeology Program.

FIGURE 38

During the period from 1885 to 1935 overgrazing, timber operations, and the improper building and maintenance of dams caused enormous damage to the Zuni watershed. Virtually all of the arroyos in the Zuni watershed were cut by deep channels. Thousands of prime agricultural land were lost to Zuni use as a result of this episode of erosion (Figures 39 and 40).

In 1981 the Zuni Indian Tribe filed suit against the United States (United States Claims Court Dockets 327-81L and 224-84L) for damages to Zuni Trust Lands. Expert testimony has provided compelling evidence on the subjects cited in part II of this statement. The great preponderance of this evidence supports the conclusions I have described in section I of this statement. Under the terms of S. 2203 the Zuni Tribe has agreed to end litigation in these two dockets in return for a $25,000,000.00 payment. Although this sum is only a little over 40% of the value of the damages as I have listed them in section II of this statement (Figure 41), I believe the legislation to be an adequate compromise solution to the damages described above, and, in addition, will eliminate stress between the Tribe and the Bureau of Indian Affairs.

Following a number of years of discussions with the Zuni Tribe, on May 10, 1988, by a Zuni Tribal Resolution, the Institute of the NorthAmerican West was asked to provide technical assistance in helping the Zuni Tribe to establish a sustainable development plan for its renewable natural resources. With an eroded agricultural base (Figure 42), diminished herds of sheep (Figure 43), drastically reduced overall land base (Figure 44), all occurring at the same time as a rapidly increasing population (Figure 45), the tribe knows that planning for the future is crucial. The Tribe desires to establish a permanent fund, the interest from which will be used

FIGURE 39

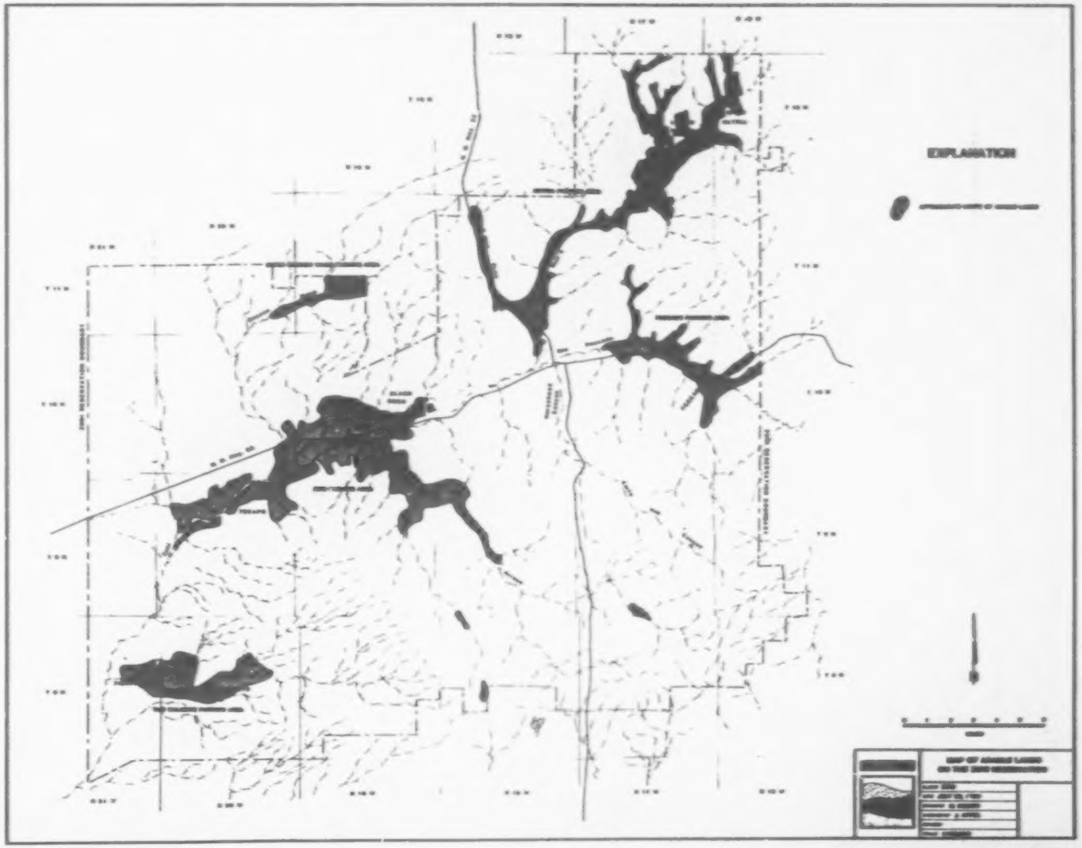
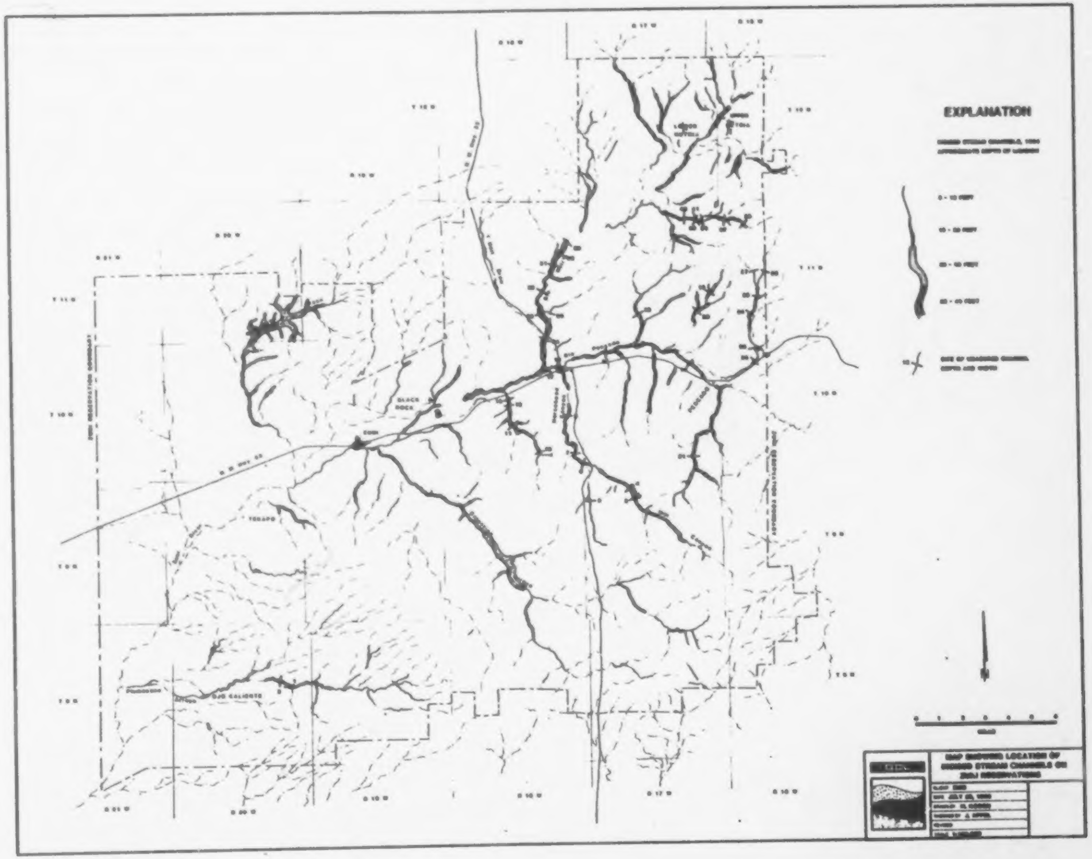
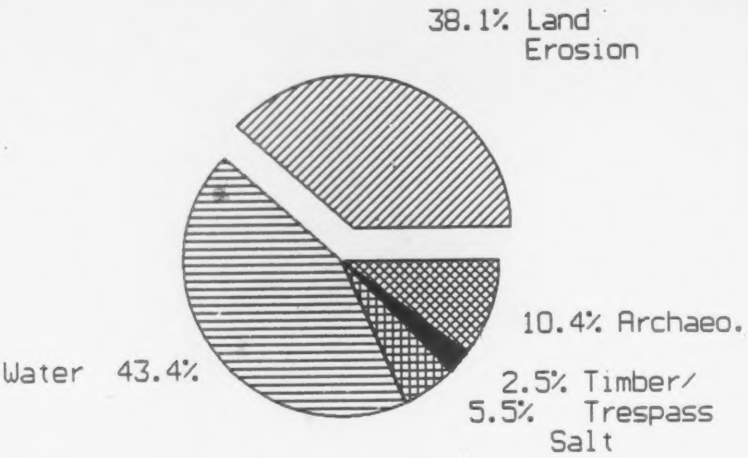

EXPLANATION

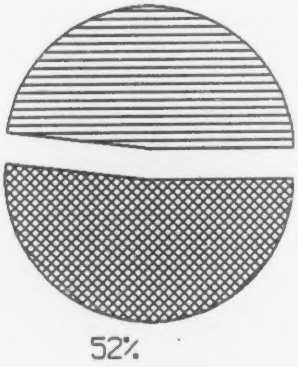
FIGURE 40


EXPLANATION
BLACK ROCK
OJO CALIENTE

Damages to Zuni Trust Lands
(Proportion of Types of Damages)



Total Value of Damages
($48.1 Million)



Amount Provided by Legislation
($25 Million)

FIGURE 41

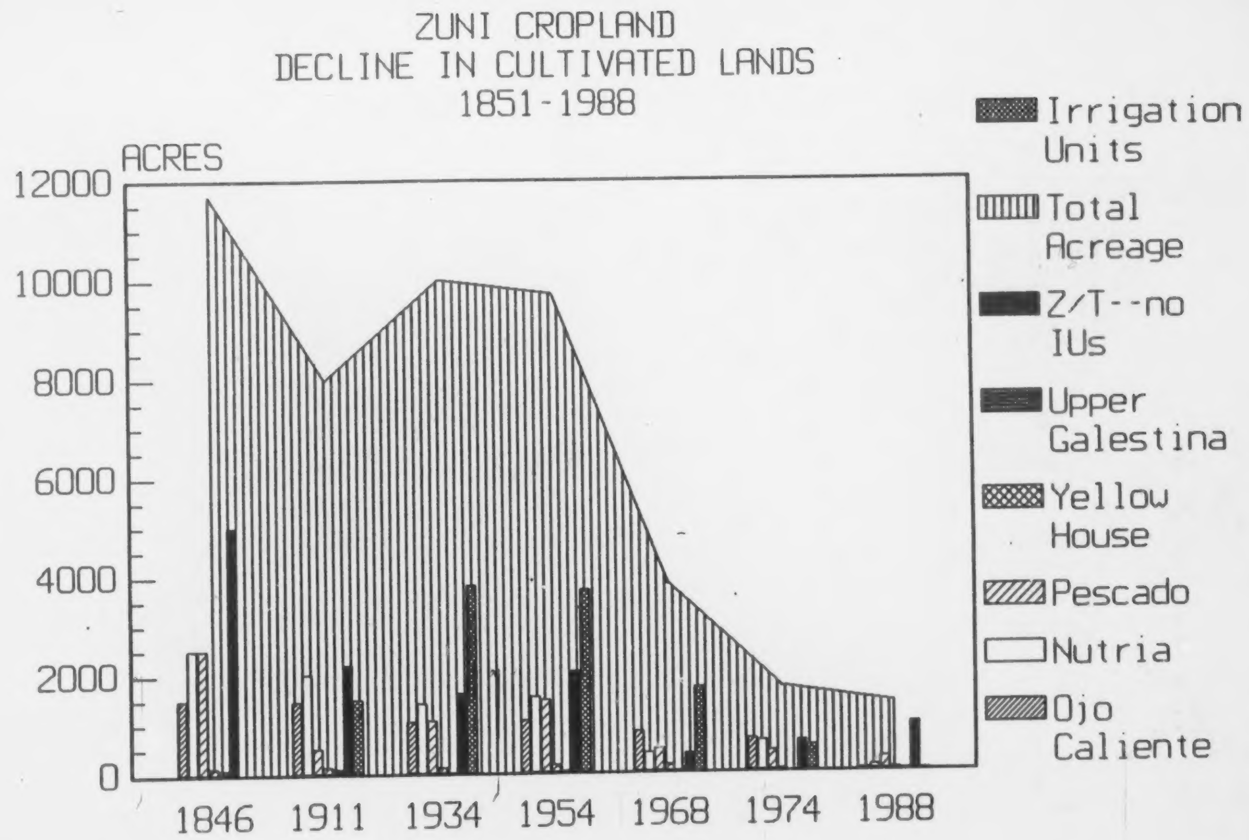

ZUNI CROPLAND
DECLINE IN CULTIVATED LANDS
1851-1988
ACRES
12000
10000
8000
6000
4000
2000
0
1846
1911
1934
1954
1968
1974
1988
Irrigation Units
Total Acreage
Z/T--no IUs
Upper Galestina
Yellow House
Pescado
Nutria
Ojo Caliente

FIGURE 42

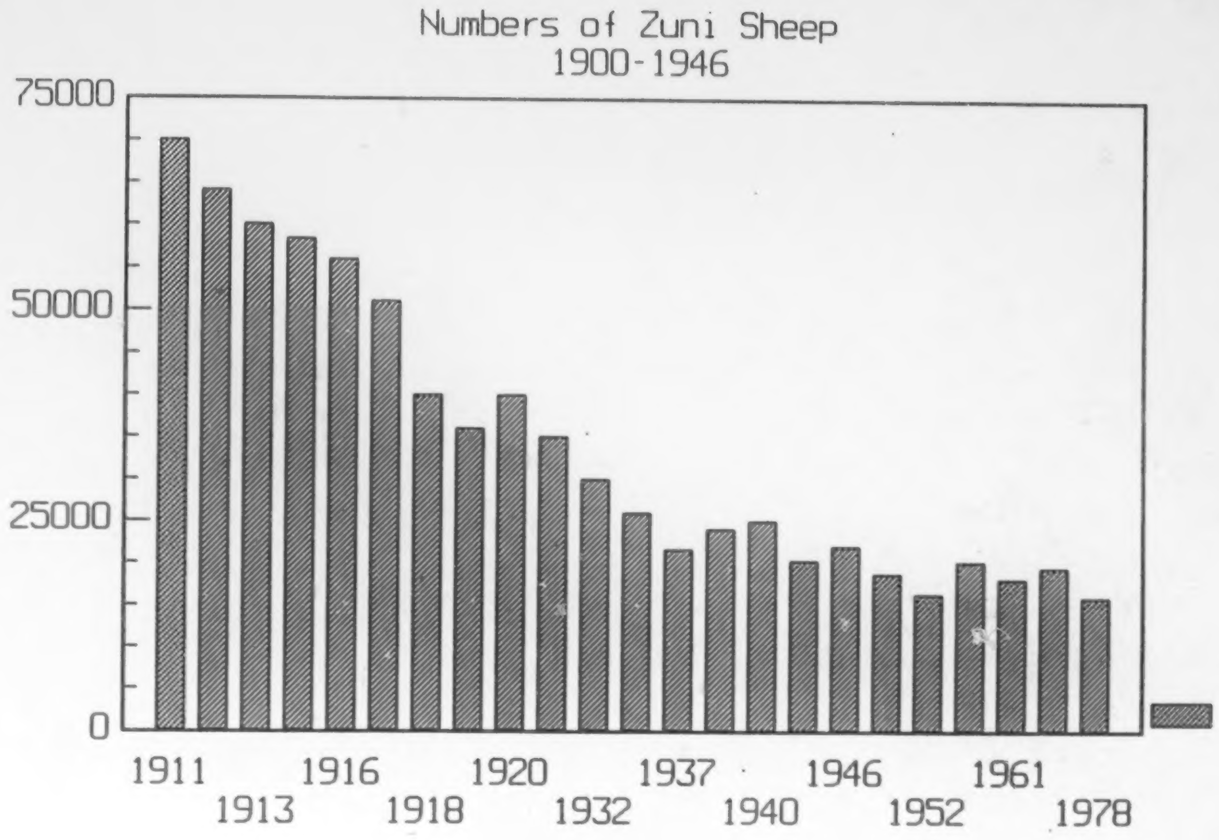
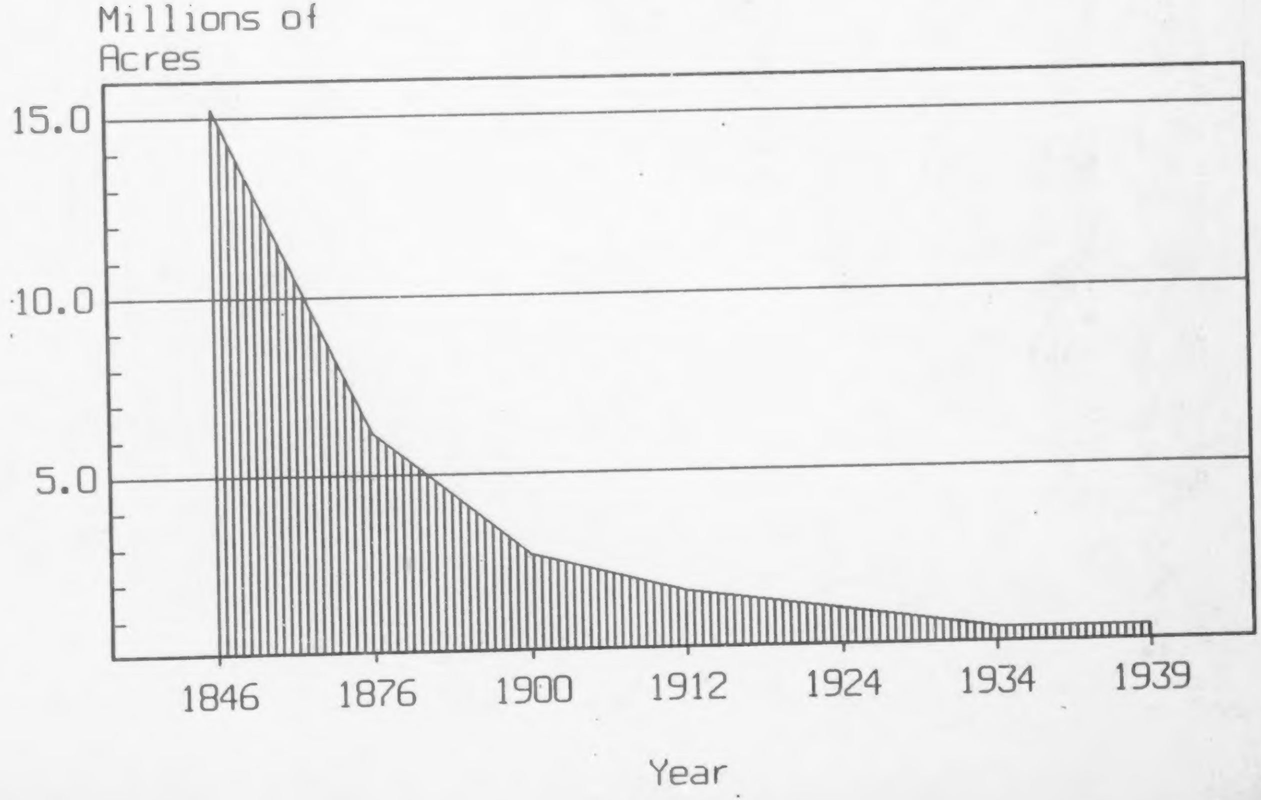

Numbers of Zuni Sheep
1900-1946
75000
50000
25000
0
1911
1913
1916
1918
1920
1932
1937
1940
1946
1952
1961
1978

FIGURE 43

FIGURE 44

Zuni Land Base



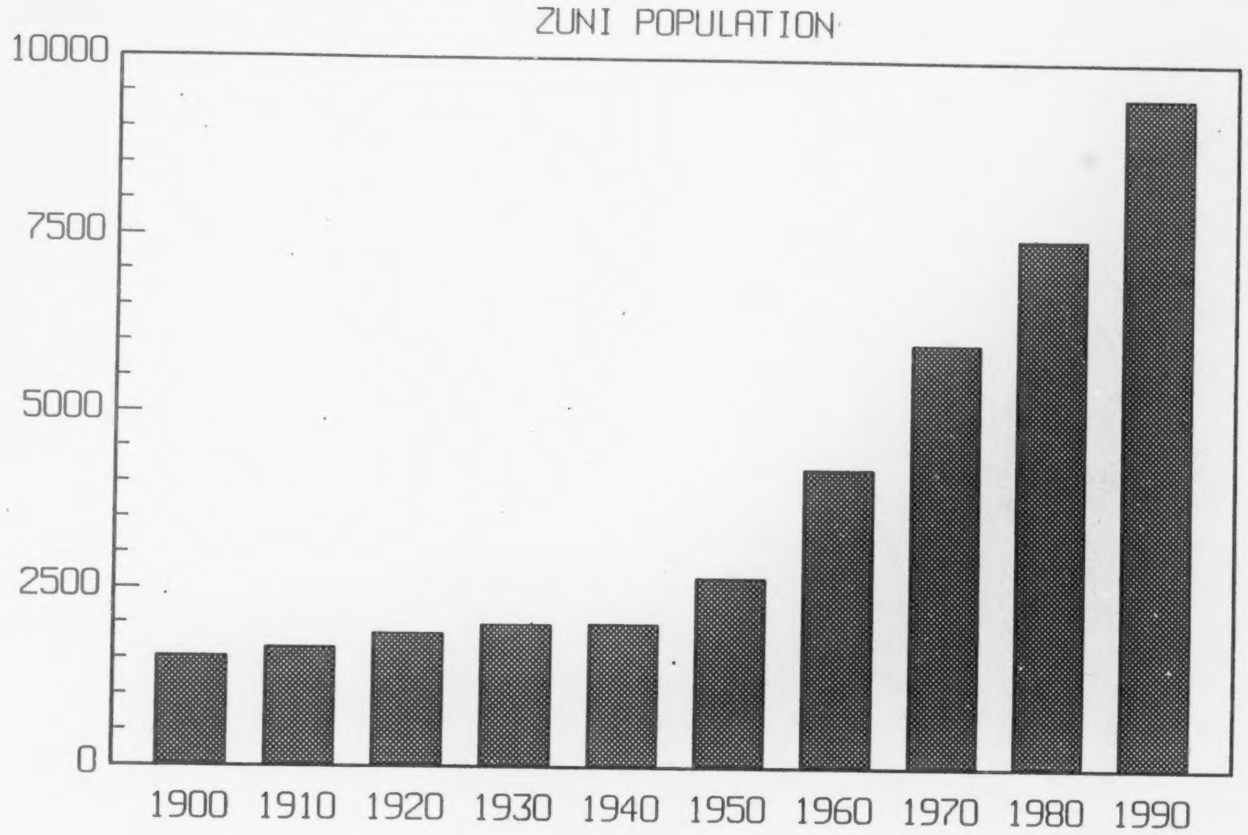

ZUNI POPULATION
10000
7500
5000
2500
0
1900
1910
1920
1930
1940
1950
1960
1970
1980
1990

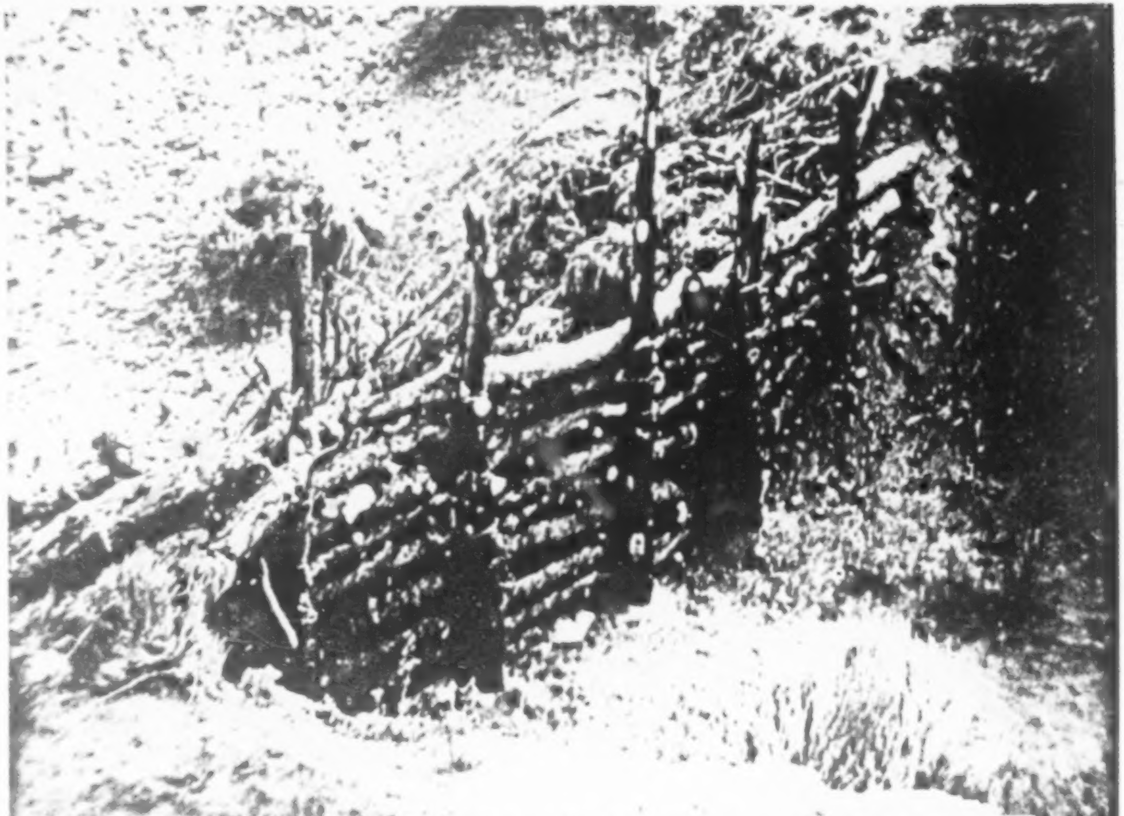
FIGURE 45

to rehabilitate the eroded Zuni landscape. Both traditional Zuni technology and contemporary state-of-the-art scientific methodology will be drawn upon in creating the model for Zuni sustainable development over a two year period described in S. 2203. Under this plan a number of positions will be established for Zuni professionals, who will direct and administer activities on the reservation and throughout the watershed. A seasonal Zuni labor force will work each season building check-dams, planting in eroded areas, and providing information from monitoring stations (Figure 46). Proper management of archaeological resources will be integrated into the plan. A digitized Geographic Information System will provide instant monitoring data on stream-flow, sediment yield, and arroyo incision depth throughout the watershed. Under the Zuni Resource Development Plan, the tribe will establish sustainable yields for timber and cropland. Water will be developed from run-off channels, as well as from the Zunis' aquifers, in order to bring agriculture back to the reservation. The Tribe desires a labor-intensive program, one that will not only result in the long-term rehabilitation of the landscape, but which will provide educational and employment opportunities for many Zuni people.

Interest in the development of this plan is widespread. The model for sustainable development that will be produced during the two year period described in S. 2203 will be offered for distribution internationally by IUCN and to western U.S. officials through the Institute of the NorthAmerican West.

I believe that the passage of this legislation will be extremely important, not only to the Zuni people, but to others who are attempting to deal with similar problems in the arid

FIGURE 46



"Check Dam" used to control erosion on the Zuni Reservation, ca. 1968, BIA Forestry Department, Zuni Tribal Archives.

Southwest, and in other parts of the world. Passage of this legislation will not only allow Zuni to rehabilitate its landscape and re-establish significant agriculture for the tribe, but will provide a model that demonstrates the value of erosion control and the principles of sustainable development in an arid landscape.

I am also submitting, for the record, a number of statements from other experts who are knowledgeable about issues related to this legislation. The authors of these statements are:

Mr. John O. Baxter, Institute of the NorthAmerican West, Santa Fe, New Mexico;

Dr. Jeffrey S. Dean, Laboratory of Tree-Ring Research, The University of Arizona;

Dr. James I. Ebert, Ebert & Associates, Albuquerque, New Mexico;

Environmental Systems Research Institute, Redlands, California;

Mr. T. J. Ferguson, Department of Anthropology, University of New Mexico;

Dr. Richard I. Ford, Director, Ethnobotanical Laboratory, Museum of Anthropology, University of Michigan;

Geoscience Consultants, LTD., Albuquerque, New Mexico;

Dr. Stephen A. Hall, Department of Geography, University of Texas at Austin;

Dr. Martin R. Rose, Laboratory of Tree-Ring Research, the University of Arizona;

Mr. Barry Sadler, International Union for the Conservation of Nature and Natural Resources (IUCN); and

Dr. Andrew Wiget, Director, The New Mexico Heritage Center, New Mexico State University.

Thank you, Mr. Chairman.

PREPARED STATEMENT OF ROBERT W. DELANEY

The Unique Treatment of Zuni Land Claims by the United States Government

A variety of conditions and circumstances during the last half of the 19th century -- especially remoteness and the venality of federal and state officials -- combined to cause the Pueblo of Zuni to receive treatment different from the other Pueblos of New Mexico relative to a resolution of their claims to land from the government of the United States.

Under the laws of Spain, and continued by the Empire and Republic of Mexico, the Pueblo of Zuni was considered to own all the land that her inhabitants effectively used and occupied.[1] Regarding New Mexico, Victor Westphall says in his Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region:

> Don Juan de Oñate secured the contract for colonization of New Mexico in 1598 and was instructed to observe the provisions of the royal order issued at Bosque de Segovia on July 13, 1573, which set forth the legislation guaranteeing Indian land and water rights. In 1680 the Laws of the Indies were codified into the *Recopilación de las Leyes de los Reynos de las Indias.* An entire title, as well as scattered laws throughout, was devoted to regulations regarding the Indians.
>
> The aborigines, as vassals of the crown, were special wards of the government; as such, Spaniards were not permitted to take land from them. Spanish grazing permits were not sanctioned in areas close enough to Indian land so that Indian crops might be damaged by livestock. The Indians were to have full possession of all the lands they used or occupied; furthermore, they were to receive additional territory at any time when that which they controlled was insufficient for their needs. A cédula of 1687 confirmed and strengthened previous ordinances and authorized the grant of virtually unlimited space for such needs as might be required.[2]

The rule of Spain in the present-day southwestern portion of the United States ceased in 1821, and land previously claimed by her became the property of the Empire (1821-23) and then the Republic of Mexico (1823-46). Under Mexico, the Plan of Iguala decreed that all inhabitants of New Spain (Mexico) were considered to be citizens.[3]

The United States occupied most of the southwestern portion of present-day United States in 1846, and United States sovereignty over that area, which included Zuni lands, was established by the Treaty of Guadalupe-Hidalgo of February 2, 1848.[4] By Article 8 of that treaty, the United States obligated herself to recognize completely the property rights and other rights of former Mexican citizens. Thus, the United States promised to recognize and confirm the lands of the Pueblo Indians that had been recognized by Spain and Mexico.

To investigate and validate land claims, the United States Congress established the Office of Surveyor-General of New Mexico with the specific charge, "to investigate the land claims of the Pueblo Indians of New Mexico and to report those claims to Congress where they could be confirmed."[5]

The first Surveyor-General of New Mexico, William Pelham, determined that there were 20 active Pueblos. Of these, claims were filed promptly for all but Zuni, although no time limit for filing was set. Those filed were reviewed by the Office of Surveyor-General, approved by that office, and certified to Congress where they were confirmed and patents issued. Zuni's claims to its aboriginal lands were not investigated at all by U.S. officials at that time, partly because of Navajo and Apache depredations in the area of Zuni.

The threat of Navajo and Apache raids was removed when, as a Civil War measure, the Navajos and Mescalero Apaches were defeated by U.S. troops under Kit Carson, and many of those groups were removed to Fort Sumner (Bosque Redondo) from 1864 to 1868. By 1868, a treaty was concluded with the Navajos, and they were permitted to return to their ancestral homeland. The Civil War had ended, and the Apaches were effectively contained, but U.S. officials still did not investigate the Zuni land claims.

Although the Zunis made repeated attempts to press their claims, no action was taken by U.S. officials until 1875. In the first part of that year, the Pueblo Indian agent asked the Zunis to turn in to the Surveyor-General's office any documents in their possession concerning their lands under Spain and Mexico.[6] In July 1875, the Pueblo Indian agent deposited with the Surveyor-General's office papers identified as representing a land grant to Zuni.[7]

Henry M. Atkinson was appointed Surveyor-General of New Mexico in 1876 and remained in that position until 1885. It was a classic case of putting the fox to guard the chickens. During that time he was closely allied with the corrupt "Santa Fe Ring" and was deeply involved with numerous fraudulent land deals, including illegal and improper surveys made under his authority.[8] Victor Westphall, in his The Public Domain in New Mexico 1854-1891, has this to say:

> The decade of the 1880's in New Mexico saw the expansion of the railroad and a boom in land entries and the cattle business. Land for grazing purposes was needed in ever increasing quantities--far more than could legally be acquired under the land laws. Competition for grazing rights on the public domain was becoming so keen that it was ever more desirable to acquire title to land--especially to land that controlled water. The consequence was an epidemic of fraudulent manipulation of the land laws. Prior to this decade there had been only four indictments for land fraud in the Territory, none of which had resulted in a conviction.[9]

Zuni lands, remote from populated centers, fell prey to predators at a time when fortunes were being made illegally by speculators involved in railroad, livestock, timber, and mining interests.

If the papers given by the Zunis in July 1875, were original documents representing land grant titles under Spain or Mexico, they did not survive in the files of the Surveyor-General of New Mexico,[10] and they did not lead to any honest effort to investigate the Zuni claims.[11] In 1877, Atkinson recommended a small reservation for the Zuni tribe (17,581 acres), without even consulting them--a reservation that did not even include all of the villages, town, and ranches that they were occupying at that time.[12] Atkinson believed that the "Cruzate" documents were genuine, although contemporaries knew they were spurious, and that Spain set aside four square leagues of land for each Pueblo, although there were no Spanish laws to support such a belief.[13] By certifying such, Atkinson restricted the Zunis to that small amount of land.[14] This amount of land was certified to the Zunis by Executive Order of Rutherford B. Hayes, March 16, 1877. Additional amounts of land were added to the Zunis by Executive Order of Chester A. Arthur on May 1, 1883, and again by him on March 3, 1885, but altogether this Executive Order land represented only about 2% of the land the Zunis enjoyed under Spain and Mexico,[15] and still no patent was issued by Congress while the office of Surveyor-General of New Mexico existed.

By Act of March 3, 1891, the Office of Surveyor-General was abolished, and the Court of Private Land Claims established.[16] Nothing happened immediately, but on September 22, 1896, the Acting Agent for the Pueblo and Jicarilla agency informed the Commissioner of Indian Affairs that he had ascertained from the Governor of Zuni Pueblo that all their documents, deeds, etc. regarding their lands had been lost.[17]

They were later found in the files of the Surveyor-General, which had become the property of the Court of Private Land Claims, and they were referred to the Commissioner of the General Land Office for an expression of his views. However, since the Zunis had not filed any claim during the two years allowed by the Act which set up the Court of Private Land Claims, the Commissioner of the General Land Office and the Commissioner of Indian Affairs saw no way for Congress to confirm Zuni claims, except by Special Act of Congress or an Act of Congress which would permit a suit in the Court of Private Land Claims.[18] Ralph Emerson Twitchell has this to say about the Zuni claims in his The Spanish Archives of New Mexico:

> Pueblo of Zuñi
>
> There are two Spanish papers in this case. The one dated 1689 is spurious. The claim was approved by the surveyor-general in 1879, but Congress never acted upon the claim. The surveyor-general believed that the signature of Governor Cruzate was genuine. The claim was never filed with the court of private land claims. The grant was surveyed in 1880 for an area of 17,581 acres.[19]

Numerous attempts were made to get Congress to certify and issue patents to Zuni land, but every attempt resulted in failure, and the Zunis continued into the 1930's without any title confirmation by Congress and the protection this would have afforded.

Conclusion

Because of various factors, Zuni land claims were treated in a manner unique and different from the other Pueblos of New Mexico and did not receive the protection of the United States government, which had a trust responsibility to the Zunis and their lands. Because of this lack of protection, Zuni lands were raped by railroad interests, livestock, interests, timber interests, mineral interest, etc., and the failure of the United States government to intervene represented a uniqueness in the treatment of Pueblo land claims, which resulted in great damage to the Zuni tribe.

Notes

1. Santiago Oñate. "Memorandum on Water Rights of Indian Communities in New Mexico (With Special Reference to the Jemez Valley)," United Mexican States, Federal District City of Mexico, Embassy of the United States of America; expert testimony submitted in behalf of the United States Department of Justice, 1987, pp. 14-17. Will M. Tipton. "Memorandum of the Contents of those Spanish Archives in the U.S. Surveyor General's Office, at Santa Fe, New Mexico, that relate to lands of the Pueblo Indians. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico, 1911-1912. MSS., Record Group 75, Denver Federal Center, p. 62. Tipton was the person who proved from internal evidence that the "Cruzate" documents (including the two Spanish documents in the Zuni case) were spurious and clumsy forgeries made much later than 1689.

2. Victor Westphall. Mercedes Reales: Hispanic Land Grants of the Upper Rio Grande Region, Albuquerque: University of New Mexico Press, p. 110.

3. Ibid., p. 111.

4. The Treaty of Guadalupe-Hidalgo between the United States and the Republic of Mexico can be found in various publications including: Richard N. Ellis (ed.). New Mexico Historic Documents, Albuquerque: University of New Mexico Press, 1975.

5. 10 Stat. 309.

6. Thomas to Burgess, March 3, 1875. Record Group 75, "Copies of Letters Sent," Paper #75, Pueblo Agency in the Denver Federal Records Center.

7. Zuni Papers. Case V, in Surveyor-General Land Grant Papers, Paper #1 submitted on July 3, 1875. Microfilm, University of New Mexico Library.

8. "Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Title to Lands in New Mexico." 48th Cong., 2nd Sess., Sen. Ex. Doc. No. 106, March 5, 1885.

9. Victor Westphall. The Public Domain in New Mexico 1854-1891, Albuquerque: University of New Mexico Press, p. 100. The fraudulent activities are detailed in this work by Westphall in the chapter entitled, "Federal Prosecution of Fraud," pp. 100-114. See also, Richard W. Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles 1891-1904, Albuquerque: University of New Mexico Press, 1975. Chapter I, pp. 1-16. This discusses the activities of the "Santa Fe Ring" and the complexity of determining the validity, extent, and ownership of grants made by Spain and Mexico. See also, Philip J. Rasch. "The People of the Territory of New Mexico vs. the Santa Fe Ring," New Mexico Historical Review, Vol. XLVII, No. 2 (April, 1972), pp. 185-188.

10. McCavan, et. al., "Blackrock," Aug. 26 [1909], Entry in Miscellaneous Letters Sent, Record Group 75 in Denver Federal Records Center.

11. Judge's opinion. Finding #16. "Zuni Aboriginal Lands Remain Intact Under Spain" in The Zuni Indian Tribe of New Mexico v. The United States, Docket 161-79L, Filed May 27, 1987. See also, Myra Ellen Jenkins, "The Pueblo of Zuni and United States Occupation," written testimony submitted to the United States Court of Claims in behalf of the Zuni Indian Tribe; Zuni Indian Tribe of New Mexico v. United States, Docket 161-79L, 1980, pp. 65-66. See also, John A. Clark, Surveyor General to Joseph S. Wilson, Commissioner of the General Land Office, August 6, 1867, Surveyor General Records, Letters Sent, Vol 2, New Mexico State Records Center and Archives.

12. E. Richard Hart. "Damage to Zuni Trust Lands," expert testimony submitted to the Unites States Claims Court, Zuni Indian Tribe v. United States of America, Docket 327-81L, p. 86. E. Richard Hart. "Boundaries of Zuni Land: With Emphasis on Details Relating to Incidents Occurring 1846-1946," written testimony submitted in behalf of the Zuni Indian Tribe, Zuni Indian Tribe v. The Unites States. Docket 161-79L, p. 61.

13. Myra Ellen Jenkins. "Spanish Land Grants in the Tewa Area," New Mexico Historical Review, Vol. XLVII, No. 2 (April, 1972), pp. 113-116.

14. Will M. Tipton, Inspector, Department of the Interior. "Memorandum in regard to Pueblo Grants in New Mexico. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico, 1911-1912, MSS., Record Group 75, Denver Federal Center, p. 9. "Zuni Land Grant Papers, " paper #1, July 3, 1875 by B.M. Thomas, Surveyor General Land Grant Papers, Case V, New Mexico State Archives, Santa Fe.

15. T.J. Ferguson and E. Richard Hart. A Zuni Atlas, University of Oklahoma Press, Norman, 1985, pp. 57-58 and 93-94. "Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296), cited in: George E. Fay (ed.). "Zuni Indian Pueblo, New Mexico. Part I: U.S. Congressional Documents, 1877-1967," University of Northern Colorado Museum of Anthropology, Occasional Publications in Anthropology, Ethnology Series, No. 20; Museum of Anthropology; University of Northern Colorado; Greeley, Colorado; pp. 1-55.d. Fay gives a translation of and comments regarding the spurious "Cruzate" documents. See also, E. Richard Hart. "Damage to Zuni Trust Land," expert testimony submitted to the United States Claims Court, Zuni Indian Tribe v. United States of America, Docket 327-81L, pp. 86-141.

16. 26 Stat. 854.

17. The three-volume work by Fay cited above has complete documentation of all actions of U.S. government officials regarding Zuni land.

18. Fay, op. cit., Part I.

19. Ralph Emerson Twitchell. The Spanish Archives of New Mexico, Cedar Rapids: The Torch Press, 1914, p. 483.

Fraudulent Land Activities by United States Officials Affecting Title to Zuni Lands: Conclusions

by

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1. Under the laws of Spain and Mexico, Zuni was granted the use of all of the land that it could effectively use and occupy.[1]

2. There is no evidence that any encroachment on any of Zunis' aboriginally-held homeland ever took place during the period from 1540 through 1846.[2]

3. There is a great deal of evidence supporting Zuni's claim that Spain and Mexico explicitly recognized Zuni's legal rights to its aboriginal land.[3]

4. In 1846, when it occupied and exercised sovereignty over New Mexico, including the Zuni claim area, the United States promised to recognize title to pueblo lands that had been recognized by Spain and Mexico, and to provide just compensation for any lands that were taken from Pueblos.[4]

5. Under the Treaty of Guadalupe Hidalgo in 1848 the United States further promised to protect all Pueblo Indian lands, to the complete extent to which they had been protected by Spain and Mexico.[5]

6. In 1854 the United States established the Surveyor-General of New Mexico under "An Act To Establish the Offices of the Surveyor-General of New Mexico . . .," one of whose specific duties was to investigate the land claims of the Pueblo Indians of New Mexico and to report those claims to Congress where they could be confirmed.[6]

7. Congress had put in place a mechanism by which Zuni title to its aboriginal lands could have been recognized by Congress. By 1860 the Surveyor General had reviewed all of the other Pueblos' land claims and referred them to Congress where they were confirmed, but because of Navajo and Apache hostilities in the western part of the territory, United States officials failed

to investigate the Zuni Indians' claims between 1846 and 1875.[7]

8. During the period from 1846 to 1875 the Zuni Indians repeatedly attempted to press for their claim of recognized lands, making detailed descriptions of their claim, explaining to United States officials that these lands had been recognized under Spanish and Mexican law, and that the United States has similarly promised to recognize Zuni's title to the lands.[8]

9. United States law specifically and expressly prohibited any disposal of the public domain in the Zuni claim area until the Surveyor General had investigated the Zuni claim there and until he had surveyed the remainder of the lands in question so they could be opened to public sale.[9]

10. Between 1869 and 1885 the Surveyor General's office in New Mexico was filled by men who were implicated in widespread fraudulent and malfeasant land activities; and during the same period similar scandalous fraudulent activities were associated with the land office and Surveyor General's office in Arizona.[10]

11. None of the Zuni claim area was properly surveyed or opened for public sale prior to 1875.[11]

12. In early 1875 the Pueblo Indian Agent asked the Zunis to turn in to the Surveyor General's office any Spanish or Mexican land grants that they had in their possession.[12]

13. In July, 1875 the Pueblo Indian Agent deposited papers identified as representing a Zuni land grant with the Surveyor General.[13]

14. The Surveyor General never visited Zuni to investigate the Zuni claim, never asked or had any of his subordinates ask what the Zunis' claim to land was, nor at any time did he make any honest effort to investigate the Zuni claim to lands.[14]

15. Henry M. Atkinson, who was appointed as new Surveyor General of New Mexico in 1876, and remained in that position until 1885, was deeply involved in fraudulent land activities within the Zuni claim area, and had improper and illegal surveys conducted under his authority.[15]

16. In 1877 Atkinson recommended a small reservation for the Zuni Tribe without ever consulting with them, a reservation which did not even include the lands embraced by all of their towns, villages and ranches.[16]

17. In 1879 Atkinson approved a spurious land grant document, certifying it as "genuine" although it was shown by other contemporaries to clearly be a clumsy forgery. This so-called "grant" might have restricted the tribe to an even smaller amount of land.[17]

18. Between 1846 and 1875, Zuni had in its possession land grant papers that did not survive in the files of the Surveyor General of New Mexico.[18] Subsequent investigations of the document certified by the Surveyor General of New Mexico as a genuine Spanish land grant have indicated it was forged in the mid-19th century. All of the original Spanish documents mysteriously

disappeared from the Zuni file!"[19]

19. By 1885, under Atkinson, a series of executive orders had established the basis for what would be the Zuni Reservation, a reserve that even after several changes would encompass only 2% of the land that had been recognized under Spain and Mexico for centuries.[20]

20. Atkinson, together with Max Frost, the Register of the General Land Office in Santa Fe; Pedro Sanchez, the Pueblo Indian agent; John A. Logan, a candidate for Vice-President of the United States, New Mexico territorial officials and other non-Indian citizens engaged in a widespread conspiracy to defraud both the United States and the Zuni Indian Tribe of lands within the Zuni claim area.[21]

21. Atkinson, Frost and their ring conspired to obtain 2.3 million acres of the public domain within the Zuni claim area, to the southeast of Zuni village.[22]

22. Members of the ring conspired to defraud Zuni of prime agricultural lands in the Nutria Village area.[23]

23. Atkinson and his ring were caught forging land entries and newspaper notices, making illegal surveys, providing insider information to their own companies from secret surveys, making illegal land entries by using fictitious names on homestead entries and by using peoples names without their knowledge, depriving legitimate land-owners of title to their land, illegally disposing of entries when they were discovered, bribing those whose names had been used when the use was discovered, and, in addition fugitive members of the ring were sought for murder of innocent settlers who attempted to make honest entries within the area the ring was attempting to secure.[24] Prior to the late 1880s, fraud and collusion prevented any "arms-length" land transactions from taking place within the Zuni claim area.

24. Investigators for the United States Department of the Interior conducted an in-depth inquiry into the land fraud in the Territory of New Mexico, including and within the Zuni claim area, and implicated United States officials in widespread land fraud.[25] A second Congressional investigation voided the fraudulent entries in the area of Nutria.[26] Pedro Sanchez and Max Frost were indicted on numerous counts of land fraud. Atkinson was allowed to resign (his predecessor had similarly been allowed to resign).[27] Historians have concluded that massive land fraud in the period led to enormous fortunes being made by members of the ring, and millions of acres being stolen from the public domain.[28]

25. On March 3, 1891 Congress established the Court of Private Land Claims to review and confirm or reject Spanish and Mexican land claims in New Mexico and Arizona. Under provisions of this act, which repealed the Surveyor General's act of 1854, the Zuni Indians were entitled to a minimum of $1.25 an acre for any lands to which they held a valid claim, but which had nevertheless been disposed of by the United States.[29]

CONCLUSIONS:

During the only period when Zuni could have presented their claim to lands under the Treaty of Guadalupe Hidalgo, the United States officials who were charged with hearing those claims were instead involved in an effort to defraud the Zunis of those very lands, making it impossible for the Zunis to achieve recognized title to their traditional homeland. Zuni title to its centuries-old traditional land base was not recognized as a result of fraudulent and malfeasant activities on the part of United States officials.

By reason of United States officials' acts and omissions in regard the legitimate Zuni land claim, the Zuni Tribe has lost a valuable right to its property. It is now up to Congress whether just compensation is due the tribe."[30]

NOTES

1. Santiago Oñate. "Memorandum on Water Rights of Indian Communities in New Mexico (With Special Reference to the Jemez Valley)," United Mexican States, Federal District City of Mexico, Embassy of the United States of America; expert testimony submitted in behalf of the United States Department of Justice, 1987, pp. 14-17.

Will M. Tipton. "Memorandum of the Contents of those Spanish Archives in the U. S. Surveyor General's Office, at Santa Fe, New Mexico, that relate to lands of the Pueblo Indians. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico, 1911-1912. MSS., Record Group 75, Denver Federal Center, p. 62.

Myra Ellen Jenkins. "Spanish Land Grants in the Tewa Area," *New Mexico Historical Review*, Vol. XLVII, No. 2 (April, 1972), pp. 113-116.

2. Judith Ann Yanello. "Opinion: Finding No. 54. Zuni Aboriginal Lands Remain Intact Under Spain," *The Zuni Indian Tribe of New Mexico v. The United States*, Docket 161-79L, Filed May 27, 1987.

Ward Alan Minge. "Zuni in Spanish and Mexican History," written testimony submitted to the United States Court of Claims in behalf of the Zuni Indian Tribe; *Zuni Indian Tribe of New mexico v. United Sates*, Docket 161-79L, 1980.

T. J. Ferguson and E. Richard Hart. *A Zuni Atlas*, University of Oklahoma Press, Norman, 1985, p. 57.

3. Santiago Oñate. "Memorandum on Water Rights of Indian Communities in New Mexico (With Special Reference to the Jemez Valley)," United Mexican States, Federal District City of Mexico, Embassy of the United States of America; expert testimony submitted in behalf of the United States Department of Justice, 1987, pp. 14-17.

Will M. Tipton. "Memorandum of the Contents of the Spanish Archives in the U. S. Surveyor General's Office, at Santa Fe, New Mexico, that relate to lands of the Pueblo Indians. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico, 1911-1912. MSS., Record Group 75, Denver Federal Center, p. 62.

Myra Ellen Jenkins. "Spanish Land Grants in the Tewa Area," New Mexico Historical Review, Vol. XLVII, No. 2 (April, 1972), pp. 113-116.

4. Richard N. Ellis (ed.). New Mexico Historic Documents, University of New Mexico Press, Albuquerque, 1975, pp. 5-9 (the Kearny Code).

Richard Wells Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles, 1891-1904; University of New Mexico Press; Albuquerque, New Mexico; 1975; p. 11.

5. Richard N. Ellis (ed.). New Mexico Historic Documents, University of New Mexico Press, Albuquerque, 1975, pp. 10-32 (the Treaty of Guadalupe Hidalgo).

Myra Ellen Jenkins. "The Pueblo of Zuni and United States Occupation," written testimony submitted to the United States Court of Claims in behalf of the Zuni Indian Tribe; Zuni Indian Tribe of New Mexico v. United States, Docket 161-79L, 1980, p. 59.

"An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes," 33rd Congress; Session I; CH. 103; July 22, 1854; pp. 308-310.

Richard Wells Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles, 1891-1904; University of New Mexico Press; Albuquerque, New Mexico; 1975; p. 11.

6. Richard Wells Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles, 1891-1904; University of New Mexico Press; Albuquerque, New Mexico; 1975; pp. 12-13.

"An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes," 33rd Congress; Session I; CH. 103; July 22, 1854; pp. 308-310.

Myra Ellen Jenkins. "The Pueblo of Zuni and United States Occupation," written testimony submitted to the United States Court of Claims in behalf of the Zuni Indian Tribe; Zuni Indian Tribe of New Mexico v. United States, Docket 161-79L, 1980, p. 62.

Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965, pp. 2-3.

7. Judith Ann Yanello. "Opinion: Finding No. 16. Zuni Aboriginal Lands Remain Intact Under Spain," The Zuni Indian Tribe of New Mexico v. The United States, Docket 161-79L, Filed May 27, 1987.

Herbert O. Brayer. "Pueblo Indian Land Grants of the 'Rio Abajo,' New Mexico," The University of New Mexico Bulletin; Whole Number 334; November 1, 1938; p. 14.

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8. Judith Ann Yanello. "Opinion: Finding No. 28. Zuni Aboriginal Lands Remain Intact Under Spain," The Zuni Indian Tribe of New Mexico v. The United States, Docket 161-79L, Filed May 27, 1987.

E. Richard Hart. "Boundaries of Zuni Land: With Emphasis on Details Relating to Incidents Occurring 1846-1946," written testimony submitted in behalf of the Zuni Indian Tribe, Zuni Indian Tribe v. The United States, Docket 161-79L, pp. 44-61.

T. J. Ferguson and E. Richard Hart. A Zuni Atlas, University of Oklahoma Press, Norman, 1985, p. 65.

9. Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965, pp. 1-19.

"An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes," 33rd Congress; Session I; CH. 103; July 22, 1854; pp. 308-310.

10. "Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Titles to Lands in New Mexico," 48th Congress, 2nd Session, Senate Executive Document No. 106, March 5, 1885, 404 pp.

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Richard Wells Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles, 1891-1904; University of New Mexico Press; Albuquerque, New Mexico; 1975; pp. 2-3.

Philip J. Rasch. "The People of the Territory of New Mexico vs. the Santa Fe Ring," New Mexico Historical Review, Vol. XLVII, No. 2 (April, 1972), pp. 185-188.

Patrick C. Henderson. "The Public Domain in Arizona: 1863-1891," Ph.D. Dissertation, University of New Mexico, 1966, pp. 177-210.

Howard Roberts Lamar. The Far Southwest, 1846-1912: A Territorial History; W. W. Norton & Company, Inc.; New York; 1970; pp. 136-186.

11. Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965, maps 1-19.

12. Thomas to Burgess, March 3, 1875, Record Group 75, No. 75, Pueblo Agency, Copies of Letters Sent, Denver Federal Center.

13. "Zuni Land Grant Papers," paper #1, July 3, 1875 by B. M. Thomas, Surveyor General Land Grant Papers, Case V, New Mexico State Archives, Santa Fe.

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14. Judith Ann Yanello. "Opinion: Finding No. 16. Zuni Aboriginal Lands Remain Intact Under Spain," The Zuni Indian Tribe of New Mexico v. The United States, Docket 161-79L, Filed May 27, 1987.

Myra Ellen Jenkins. "The Pueblo of Zuni and United States Occupation," written testimony submitted to the United States Court of Claims in behalf of the Zuni Indian Tribe; Zuni Indian Tribe of New Mexico v. United States, Docket 161-79L, 1980, pp. 65-66.

John A. Clark, Surveyor General to Joseph S. Wilson, Commissioner of the General Land Office, August 6, 1867, Surveyor General Records, Letters Sent, Vol 2, New Mexico State Records Center and Archives. Clark did visit Zuni, and remarked on the extensive cultivated agriculture of the Zunis, but said he had no record of any claim and had no information on the extent of their claim.

15. "Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Titles to Lands in New Mexico," 48th Congress, 2nd Session, Senate Executive Document No. 106, March 5, 1885, pp. 325-348.

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16. E. Richard Hart. "Damage to Zuni Trust Lands," expert testimony submitted to the United States Claims Court, Zuni Indian Tribe v. United States of America, Docket 327-81L, p. 86.

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17. Will M. Tipton, Inspector, Department of the Interior. "Memorandum in regard to Pueblo Grants in New Mexico. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico. 1911-1912, MSS., Record Group 75, Denver Federal Center, p. 9.

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18. McCavan, et. al., Blackrock, August 26, [1909], Entry: Misc. Letters Sent, RG 75, Denver Federal Center.

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19. Herbert O. Brayer. "Pueblo Indian Land Grants of the 'Rio Abajo,' New Mexico," The University of New Mexico Bulletin; Whole Number 334; November 1, 1938; p. 14.

Will M. Tipton, Inspector, Department of the Interior. "Memorandum in regard to Pueblo Grants in New Mexico. Prepared by order of the Secretary of the Interior, for the use of the Special Attorney for the Pueblo Indians of New Mexico. 1911-1912, MSS., Record Group 75, Denver Federal Center, p. 9.

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20. T. J. Ferguson and E. Richard Hart. A Zuni Atlas, University of Oklahoma Press, Norman, 1985, pp. 57-58 and 93-94.

"Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296), which is reprinted in the following source.

George E. Fay (ed.). "Zuni Indian Pueblo, New Mexico. Part I: U. S. Congressional Documents, 1877-1967," University of Northern Colorado Museum of Anthropology, Occasional Publications in Anthropology, Ethnology Series, No. 20; Museum of Anthropology; University of Northern Colorado; Greeley, Colorado; pp. 1-55.d

E. Richard Hart. "Damage to Zuni Trust Lands," expert testimony submitted to the United States Claims Court, Zuni Indian Tribe v. United States of America, Docket 327-81L, pp. 86-141.

21. Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296).

"Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Titles to Lands in New Mexico," 48th Congress, 2nd Session, Senate Executive Document No. 106, March 5, 1885, pp. 325-348.

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Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965; especially pp. 24-32, 54-60 and 106.

22. Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965; especially pp. 24-32, 54-60 and 106. Note General Land Office map on p. 57.

23. Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296).

24. Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296).

"Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Titles to Lands in New Mexico," 48th Congress, 2nd Session, Senate Executive Document No. 106, March 5, 1885, pp. 325-348.

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"Letter from the Secretary of the Interior Transmitting Copies of Reports upon the Subject of Fraudulent Acquisition of Titles to Lands in New Mexico," 48th Congress, 2nd Session, Senate Executive Document No. 106, March 5, 1885, pp. 325-348.

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26. Zuni Indian Reservation in New Mexico and Arizona," 48th Congress, 2nd Session (1884), Vol. 21, No. 11 (Serial Set #22296).

27. Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965; pp. 23-24, 30-32, 107-108.

28. Westphall, Victor The Public Domain in New Mexico, 1854-1891; The University of New Mexico Press; Albuquerque; 1965.

Howard Roberts Lamar. The Far Southwest, 1846-1912: A Territorial History; W. W. Norton & Company, Inc.; New York; 1970.

Patrick C. Henderson. "The Public Domain in Arizona: 1863-1891," Ph.D. Dissertation, University of New Mexico, 1966.

29. Richard Wells Bradfute. The Court of Private Land Claims: The Adjudication of the Spanish and Mexican Land Grant Titles, 1891-1904; University of New Mexico Press; Albuquerque, New Mexico; 1975; pp. 17-24.

"Old Index of Private Land Claims in New Mexico, Arizona, and Colorado, 1858-1905 (Volume 145), microfilm, Records of the Bureau of Land Management, Record Group 59, National Archives.

United States Statutes at Large, XXVI, Sec. 14, 861.

"An Act to establish the offices of Surveyor-General of New Mexico, Kansas, and Nebraska, to grant Donations to actual Settlers therein, and for other purposes," 33rd Congress; Session I; CH. 103; July 22, 1854; pp. 308-310, also set the minimum value for disposal of lands at $1.25/acre.

30. See proposed amendment to S. 2203 requested by the Zuni Indian Tribe:

AMENDMENT

> Title to lands of the Zuni Indian Tribe described in Finding No. 88 in the Decision of the United States Claims Court filed May 27, 1987 in docket No. 161-79L is hereby recognized for the permanent use and occupation of the Zuni Indian Tribe effective July 4, 1848 for the limited purpose of providing just compensation to the Zuni Indian Tribe under the Fifth Amendment to the United States Constitution for the taking of said lands by acts or omissions of the United States.

STATEMENTS FROM EXPERTS RELATIVE TO S. 2203

Before

The Select Committee on Indian Affairs
United States Senate
101st Congress, 2nd Session

MAY 7, 1990

Mr. John O. Baxter, Institute of the NorthAmerican West, Santa Fe, New Mexico;

Dr. Jeffrey S. Dean, Laboratory of Tree-Ring Research, The University of Arizona;

Dr. James I. Ebert, Ebert & Associates, Albuquerque, New Mexico;

Environmental Systems Research Institute, Redlands, California;

Mr. T. J. Ferguson, Department of Anthropology, University of New Mexico;

Dr. Richard I. Ford, Director, Ethnobotanical Laboratory, Museum of Anthropology, University of Michigan;

Geoscience Consultants, LTD., Albuquerque, New Mexico;

Dr. Stephen A. Hall, Department of Geography, University of Texas at Austin;

Dr. Martin R. Rose, Laboratory of Tree-Ring Research, the University of Arizona;

Mr. Barry Sadler, International Union for the Conservation of Nature and Natural Resources (IUCN); and

Dr. Andrew Wiget, Director, The New Mexico Heritage Center, New Mexico State University.

Statement by John O. Baxter before the
Committee on Interior and Insular Affairs
concerning S 2203
. May 7, 1990
under contract with the Institute of the
North American West to investigate
timber cutting and land use.

This paper summarizes a longer study concerning land use within a tract of about 55,000 acres in McKinley and Valencia counties, New Mexico. Located west of the Continental Divide and east of the Zuni Reservation, the lands lie south of the Fort Wingate Military Reserve. In the study area, a pattern of overgrazing and unrestrained timber cutting developed between 1880 and 1940 that exemplifies the environmental degradation occurring over a much larger portion of the Zuni Mountains at the same time.

In 1881 and 1882, contractors hired by the federal government surveyed the area, establishing boundaries for township and range. However, alienation from the public domain began in 1872 when odd-numbered sections within the region became part of a land grant made to the Atlantic and Pacific Railroad. The donation had been authorized by an Act of Congress passed in 1866 to stimulate railway construction in the West. The even-numbered sections remained public lands until the Territory of New Mexico selected many of them for the support of educational and custodial institutions in the early 1900s.

Extending for miles on each side of the right-of-way the Atlantic and Pacific grant comprised more than three million acres in New Mexico alone, but this huge empire proved to be something of a "white elephant" at first. The region's aridity and remote location discouraged large investors; railroad policymakers opposed sales of small parcels to settlers. However, there were a few important exceptions in the area considered by this study. In 1886, the Cebolla Cattle Co. of Fort Wingate bought 41,592.19 acres of timber and grazing land from the railroad's odd-numbered sections for fifty cents per acre. Because the purchase gave control of the even-numbered sections as well, the company secured use of some 100,000 acres which the company stocked with a large number of range cattle. In 1899, the company was taken over by General E.A. Carr, former commanding officer of Fort Wingate, and his son, Clark Carr, general manager of the ranch.

Timber cutting in the area began in 1881 and 1882 when the Atlantic and Pacific pushed its tracks across New Mexico and Arizona. Subcontractors working nearby included John W. Young, son of Mormon leader Brigham Young, who agreed to provide 500,000 ties, enough for 200 miles of track. After the first big cut, railroad demand subsided rapidly, but large-scale logging resumed in 1890 when the railroad sold 314,668.37 acres at $2.00 each to the Mitchell brothers of Cadillac, Michigan. The tract lay immediately east of the lands purchased by the Cebolla Cattle Co. four years earlier. Envisioning an enormous enterprise, the Mitchells constructed a new sawmill on the railroad's mainline and laid six miles of track to carry timber out of the woods. However, after less than three months of operation, the severe business depression of the 1890s forced the Michigan men to shut down.

By 1901, the national economy had improved sufficiently to encourage new activity by lumbermen in the Zuni Mountains. On December 30, the Mitchell brothers sold 292,804 acres to the American Lumber Co., recently incorporated in New Jersey. The price, $1,100,000, assured a substantial profit, amply rewarding the former owners for their patience. American Lumber quickly became one of New Mexico's largest industries. In the fall of 1903, the company employed 1,500 men cutting timber and completing a new sawmill at Albuquerque. During 1904 and 1905, the Albuquerque plant turned out 35 million board feet each year from logs cut in the Zuni Mountains.

To ensure efficient operations and avoid boundary squabbles, lumber company officials purchased the stumpage on even-numbered sections owned by the Territory of New Mexico interspersed among their own. In 1904, for example, American Lumber secured the timber on 34,000 acres at $2.50 each. By May 1, 1907, the Albuquerque mill had produced more than 141 million board feet from 270,000 acres, averaging slightly more than 5,000 feet per acre. As logging proceeded, the lumber company began selling off large tracts of cut-over lands to local ranchers at prices ranging from $1.00 to $2.00 per acre. Subsequent overgrazing combined with the intensive timber cut to cause ruinous erosion and watershed degradation in the Zuni range.

Meanwhile, the Carr family negotiated a successful sale of the timber lands on the property formerly owned by the Cebolla Cattle Co. On May 11, 1906, Clark Carr sold 18,417.16 acres for $6.20 per acre to Michigan investors headed by William McFarlane. The purchasers also agreed to assume an outstanding balance due the Territory of New Mexico for a timber lease on intermediate sections and pay the sellers an additional fifty cents per acre for their interest therein. Total receipts of more than $120,000 from the land sale provided the Carr family with a very satisfactory return on capital invested. Clark Carr then established a sheep ranch on that portion of the property still unsold.

For several years, McFarlane and his associates did not harvest any timber or otherwise develop the lands purchased from the Carrs. However, in 1914, they sold the stumpage to Amasa B. McGaffey, an agressive lumberman and a native of Vermont. No stranger to the Zuni Mountains, McGaffey had previously entered into a contract to cut one million crossties for the Santa Fe Railroad on lands belonging to the American Lumber Co. In 1911, he became the successful bidder for an estimated 42 million board feet of timber in the Zuni National Forest on a tract in the Fort Wingate Reserve just north of the former Carr property. To process the logs, McGaffey established a new mill and company town which he modestly named after himself. Having secured the McFarlane stumpage McGaffey's men proceeded to strip almost all the standing timber in that portion of the Zuni Mountains during the next two decades. At the same time, lumberjacks employed by the McKinley Land and Lumber Co., successor to the American Lumber Co., clear-cut an even larger area lying immediately to the east.

During the years when McGaffey and McKinley loggers were active in the Zuni range, they adopted few conservation practices. Unfailingly, both organizations sought to maximize profits with little consideration for such innovations as sustained-yield cutting or retention of a residual stand for re-seeding. Frequently, overgrazing accompanied intensive logging as large herds of livestock followed in the wake of the timber cutters. By 1940, soil erosion had become acute over large areas and "hyper-critical" on some localized tracts, according to Forest Service reports. Such erosion represented the culmination of misuse for sixty years, a period in which exhaustive exploitation left a badly damaged landscape over much of the Zuni Mountains.

DENDROCHRONOLOGICAL DATING OF FLOODPLAIN EROSION ON ZUNI INDIAN LANDS

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24 April 1990

DENDROCHRONOLOGICAL DATING OF FLOODPLAIN EROSION ON ZUNI INDIAN LANDS

The Zuni Tribe contends that much of the present erosional damage to their lands was triggered by government sponsored or imposed activities that contravened traditional, conservational land use practices. Among the environmentally unsound activities implemented by the government were clear cutting of forests in nearby mountains, enforced overgrazing of the range, suppression of traditional farming practices, forced adoption of large scale agriculture, and the construction of water control systems, such as the ill-fated Black Rock Dam and other impoundments, that were unsuited to the fragile environment. These activities contributed directly to the severe erosion of a delicate landscape that was vulnerable to environmental degradation.

The dendrochronological study summarized here contributes to the documentation of Zuni land damage through the precise dating of erosional events along the streamcourses of the area. In the semiarid Southwest, trees that live through the same sequence of dry and wet years produce identical patterns of ring-width variability. Matching of these patterns (crossdating) allows dendrochronology to date each annual growth ring to the exact year in which it was produced. Tree-ring dates are accurate to the calendar year and have no associated statistical uncertainty. Thus, the date of the initial ring specifies the year in which the tree germinated, while that of the terminal ring indicates the year in which the tree died. Tree-ring dates from wood samples associated with the physical manifestations of past natural or human events can be applied to those events.

The key to the dendrochronological dating of erosional events is the association between the dated plants and the land surfaces that represent these events. The erosion that produced a particular surface must have occurred before the trees or shrubs growing on that surface germinated. Thus, the oldest germination date for any of these plants provides an upper time limit for the formation of the surface and a lower limit for the deposition of overlying strata. The latest terminal ring date from a buried archaeological feature provides limits for the underlying and overlying strata. Dates from such alluvial contexts can provide accurate chronologies of floodplain developments during the time span of the dated ring sequences.

Control of the association between the dated samples and the alluvial units is maintained by carefully selecting the locations to be studied and the trees to be sampled and by collecting only relevant samples. In the Zuni study, pertinent localities were chosen on geologic grounds by Dr. Stephen A. Hall of the Department of Geography at the University of Texas at Austin to maximize the relevance of the wood samples for dating alluvial events. The selected locations possessed either living trees and shrubs or archaeological materials in unambiguous stratigraphic contexts.

Every effort was made to identify and sample the oldest plants growing on a surface and to collect samples that represented the maximum ages of the plants. Archaeological sampling was focused on preserving the terminal rings.

Samples were collected from ten separate localities. Six living-tree sites were sampled along Bosson Wash, one on the Nutria River, and two on Galestina Wash. A roasting pit buried in alluvium along Cheama Wash also was collected. This work produced 35 living tree or sagebrush samples and eight archaeological specimens.

The samples were analyzed using standard dendrochronological techniques by the Laboratory of Tree-Ring Research at The University of Arizona in Tucson. Only 15 of the samples could be absolutely dated; the remaining 20 failed to date because their ring series were either too short or too aberrant to be matched with the dated master sequences. Since the undated samples came from living plants, however, simple ring counts could be used to accurately estimate germination dates.

Arroyo cutting produced slightly different topographic expressions at each of the sampled localities. While different expressions between localities is the norm, orderly progression of erosional events is evident within localities. At the only two localities with sufficient data, Bosson Wash 5 and Galestina Wash 2 (Table 1), germination dates become progressively older with increasing depth below the current level of the valley floor. This result is exactly what would be expected if the arroyos at these loci had been produced by successive episodes of downcutting. Eleven instances of downcutting and ten instances of surface stabilization can be tree-ring dated. Nine of the former and nine of the latter predate 1945. The three earliest of these events predate 1920, while the majority fall between 1910 and 1940.

The detailed chronology of erosional events is less germane to establishing federal responsibility for the current condition of the Zuni Reservation than is the date of the onset of arroyo cutting. Since downcutting must precede the germination of the oldest tree growing within the arroyo, the latest possible dates for arroyo cutting at seven tree-ring dated localities range from 1916 to 1945 (Table 1). Only two localities, however, produced information relevant to dating the actual inception of channel incision. Initial downcutting preceded 1916 at Bosson Wash 2 and predated 1919 at Galestina Wash 2. Only the latter locus yielded tree-ring evidence bearing on the earliest possible date for the onset of downcutting. If the rapid colonization by juniper trees of the newly formed surfaces of the first and second terraces reflects an equally rapid invasion of the third terrace, floodplain stabilization and arroyo cutting probably occurred less than ten years prior to 1919. Thus, channel incision at the Galestina 2 locus could not have begun much before 1910.

In conclusion, tree-ring data from ten localities on four drainages provide a chronology of the erosional events that produced the modern arroyo system of the Zuni area. Dates from a buried roasting pit on Cheama Wash indicate that more than a meter of alluvium was deposited after the last use of the pit sometime after 1719. This evidence coupled with the failure of juniper trees to colonize the valley floors suggests that aggradation continued well into the 19th century. As far as can be determined dendrochronologically, the current episode of arroyo cutting began sometime between 1900 and 1910 and produced deep channels by the 1910s and 1920s. Once begun, downcutting continued through the 1930s and 1940s into the 1950s. Subsequent erosional and depositional events have failed to produce surfaces suitable for colonization by junipers or sagebrush.

The tree-ring chronology of erosional events is consistent with the results of other types of analysis. This chronology is supported by Hall's geomorphological conclusion that arroyo cutting spanned the period from 1910 to the present, by analyses of aerial photographs that place most of the channel incision between 1900 and 1934, and by historical references to severe gullying in the 1920s and 1930s. The strong convergence of several independent lines of evidence enhances confidence in each and in the general chronology of progressive channel incision. In combination, these independent investigations strongly support the contention that destructive erosion postdated government interference with traditional Zuni land use practices through the imposition of Anglo land and water management techniques poorly adapted to the fragile environment.

Table 1. Tree-Ring Chronology of Terrace Stabilization and Channel Incision Events, Zuni Indian Reservation, Northwestern New Mexico.

LOCALITY	THIRD TERRACE	EROSION	SECOND TERRACE	EROSION	FIRST TERRACE	EROSION	ARROYO FLOOR
Galestina 2	1919	1919-1923	1923	1923-1925	1925	1939	1939
Bosson 4		1944	1944				
Bosson 5			1936	1936	1950	1950	1950
Bosson 3				1935	1935-1978	1978?	1978?
Bosson 2					1916	1916	
Galestina 1					1932	1932	1932
Nutria					1945	1945	1945?

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SUMMARY OF HISTORICAL TERRESTRIAL PHOTOGRAPHIC ANALYSIS

Historical photographs figure in defense testimony in Docket 327-81L, particularly in Exhibits 12,000 (Wells) and 13,000 (Resource Consultants Inc.), and are used to attempt to demonstrate erosion, incision, and arroyo formation in the late Nineteenth and early 20th Centuries. Photographs from historical sources and archives are included in these reports, and what appear to be vertical walls of watercourses are remarked upon.

While some of the historic photographs in these defense exhibits do show vertical watercourse walls, others are contestable as to what is actually shown. In addition, these defense photographs appear to have been chosen to illustrate only those places in which vertical streambanks or other assumed indicators of "overall" erosion are found. They do not show any progression of erosional processes, and in fact cannot because only single depictions of what may not be completely representative areas or stretches of streams and rivers have been purposely chosen.

In order to attempt to alleviate the problems with such use of historical photographs in defense testimony, and to present a more complete picture of watercourse erosion and environmental change through time, we have applied a number of additional techniques in the use of historical photographs:

1) The Analysis of Successive Historical Photographs

Over the last ten years, Ebert & Associates has been developing methods and techniques for the analysis of successive, that is repetitive, aerial photographs for measurement of bank and watercourse erosion for applications to studies of archaeological site preservation for the National Park Service, the Bureau of Reclamation, and the Corps of Engineers. These methods have been adapted here to the analysis of sequential, historical terrestrial photographs.

Details and changes in photographs, in order to be interpretable, must be comparable. Another way of saying this is that in order to detect and measure change from photographs, one must analyze photographs of the same area through time. Change and dynamics are of course not visible on one photograph, taken at a single instant.

In the Zuni area, the comparison of historic photographs through time is facilitated by the fortunate fact that many photographers, since the mid-to-late 1800's, have photographed picturesque or interesting views at and around Zuni, many from the same or nearly the same camera stations. A comprehensive search for such comparable "rephotographs" in the Zuni area was made in a large number of historical archives throughout the country. Sequences of historical photos showing the same, or nearly the same, views at and around Zuni with erosional import were selected, and have been analyzed.

These sequences show changes and illustrate the dynamics of erosion in the Zuni area, and also demonstrate that while there were, indeed, erosion and indicators thereof in some places within the Zuni watershed even in the late 1800's, most areas do not exhibit such indicators until the period of about 1910-1920, and that erosion was increasing in almost all areas studied at this time, or slightly prior to that time. This is consistent with findings of increased timbering and grazing, as well as other human environmental disturbances which would result in increased erosion, from about 1900 onward.

2) Electronic Image Analysis of Historic Photographs

Virtually none of the historic photographs available for the Zuni and its watershed area were taken for the express purpose of illustrating bank erosion, being taken instead to emphasize the beauty and exotic landscape of this remarkable area. Indicators of overall erosional processes in these photographs, then, are often limited to very small portions of their background, and due to photographic technologies in the past, the resolution and definition of these small portions of the photographs is not ideal.

In order to provide more useful data for the analysis of erosion and its progression through time, electronic image analysis techniques have been employed. These image analysis procedures have been carried out using an analog video image analysis system which performs extreme magnification without loss of resolution, accompanied by contrast and edge enhancement, which increase the visibility of tiny or subtle photographic detail remarkably in many cases. These techniques are scientifically accepted by many engineering, aerospace, medical and other professions, both in court as well as for routine, everyday applications such as nondestructive testing, surveillance, and the inspection of photos of astronomical bodies or engineering disasters (such as the recognition of the "puff of smoke" on the space shuttle's fuel tanks).

The application of such image analysis has allowed us to isolate, inspect and compare small details of successive historical photographs and to gain a clearer picture of overall erosional indicators and the progression of erosion from approximately 1879 through the 1940's in specific places, some seen from a distance from atop mesas and hills.

The conclusions reached by virtue of these analyses and inspection are that bank and "arroyo" erosion within the Zuni watershed were a discontinuous phenomenon at about 1880-1890, and that while they were present in some situations (for instance, in the midden upon which Zuni itself is built, or along the sides of hills or bluffs), there were not ubiquitous nor very often assignable to headward cutting under any definition.

In the later 1800's, erosion began to progressively be indicated more ubiquitously, and continued to progress at a number of locations which can be inspected through the image analysis of small portions of successive terrestrial photographs, into the 1900's and in fact through about 1940. Bank erosion in these places, and in fact throughout the Zuni reservation, is thus a phenomenon which may well have begun at about the time historic photographs became available (1870 onward), increasing in intensity as deforestation and overgrazing took place in the Zuni Mountains and as man-made disturbances of the hydrologic regime, for instance dams, were built.

3) Photogrammetric Measurements from Historical Photographs

Although photographs are a familiar medium to virtually everyone, the interpretation of details of photographs, and particularly the measurement of distances and other characteristics from photographs, is not a straightforward or simple task. Measurement from photographs, or photogrammetry, is in fact a specialized science. Photographs, in representing a three-dimension scene two-dimensionally, contain many properties that might be thought of as "distortions" or "optical illusions" by the layperson or even the scientist who is not an expert in their measurement and interpretation.

For the photogrammetrist, however, these "distortions" and other characteristics of photographs are actually cues to the accurate measurement or at least estimation of distances shown. In a number of the historic photographs analyzed here, such cues as perspective and available scales were utilized to reach supportable measurements of bank heights and other photographic distances contended by the defense, as well as in other instances not cited in Exhibits 12,000 and 13,000.

To cite one instance of the re-examination of a stream bank (on the Rio Nutria, just west of Upper Nutria) reported in Exhibit 12,000 to be "several meters" high, the use of available scales (horses) in both the foreground and background allowed the construction of a perspective grid. The "several meter" high banks visible in this historic photograph (1899) can be shown to actually be between 1.25 and 2.20 feet in height. What is more, electronic image analysis demonstrates that they are not vertical in most places in this photograph.

Conclusion

The conscientious and systematic analysis of a large number of sequential, historic terrestrial photographs picturing specific portions of watercourse banks within the Zuni watershed, using electronic image analysis and photogrammetric principles, illustrates that in the 1880's, vertical "arroyo" walls are a discontinuous and probably rare phenomenon there. From that time onward, sediment removal and indications of vertically incised banks increases and accelerates. This is consistent with findings, based on both historical land records and the photointerpretation of historical aerial photographs, of wholesale timber cutting and in fact timberland denudation in the Zuni Mountain portion of the Zuni watershed.

Sincerely, James I. Ebert

James Ian Ebert, Ph.D.
Certified Photogrammetrist (ASPRS)
Director

Zuni I Area Calculations
Data Dictionary

October 14, 1987

Commissioned by the
Institute of the North American West
for Submission to the
United States Claims Court
as Expert Testimony in Docket 161-79L
in Behalf of the
Zuni Indian Tribe

Prepared by:
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Table 1
Zuni Area Calculations

TAKING AREA

TAKING	ACRES
TAKING 1 - Lands taken 1846-1876	9,104,909 acres
TAKING 2 - Lands taken 1876-1900	3,432,593 acres
TAKING 3 - Lands taken 1900-1912	1,097,044 acres
TAKING 4 - Lands taken 1912-1924	568,686 acres
TAKING 5 - Lands taken 1924-1934	590,297 acres
TAKING 6 - Lands taken 1934-1939	42,363 acres
Taking Area Subtotal	14,835,892 acres

TRUST AREA

TRUST LAND	ACRES
Zuni Heaven, Main	9,600 acres
Zuni Heaven, Lower	640 acres
Zuni Salt Lake	618 acres
Current Zuni Reservation	408,516 acres
Trust Area Subtotal	419,374 acres

TOTAL AREA

Zuni Sovereignty Area	15,255,266 acres

THE IMPORTANCE OF TRADITIONAL SOIL AND WATER CONTROL TECHNIQUES ON THE ZUNI INDIAN RESERVATION

Statement of T. J. Ferguson
Director of Southwest Programs
Institute of the NorthAmerican West

Submitted to the 101st Congress
For a Hearing on the Zuni Claims Settlement Act of 1990
S. 2203 and H.R. 4143

May 7, 1990

TRADITIONAL LAND USE

The Zuni people traditionally managed the land and water resources of the Zuni Reservation for use in domestic, agricultural, and livestock activities. Using cooperative labor, the Zuni Indians built and maintained an extensive water control system that provided water from a combination of sources, including springs, wells, ponds, seeps, reservoirs, and runoff from snow and rain. The Zunis used numerous hand built diversion and retention devices to slow runoff down and spread water out for use in farming and grazing activities. These ecologically sound techniques were developed during more than a thousand years of occupation of the Zuni River Valley.[1]

Until recently, when mechanized equipment was adopted, Zuni land use practices required relatively simple tools that were available to all tribal members.[2] The Zunis farmed a large amount of acreage in a variety of locations, including the floodplains of watercourses, sandy areas in valley bottoms, hill slopes, and benches. Cultivation of these areas helped to conserve soil and water, and retard soil erosion.[3]

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[1] Ferguson, T.J., "Patterns of Land Use and Environmental Change on the Zuni Indian Reservation, 1846-1985: Ethnohistorical and Archaeological Evidence," 1985, expert testimony submitted as Plaintiff's Exhibit 6000 in the case Zuni Indian Tribe v. United States, Docket 327-81L (Ct. Cl., filed May 12, 1981), pp. 16-31, and accompanying exhibits. (Hereinafter referred to as Ferguson, PX 6000.)

Ferguson, T.J., "Zuni Settlement and Land Use: An Archaeological Perspective," expert testimony submitted to the United States Claims Court as evidence in the case Zuni Indian Tribe v. United States, Docket 161-70L, 1980, (Ct. Cl., May 27, 1987), pp. 1-151.

[2] Ferguson, PX 6000, pp. 73-76, and accompanying exhibits.

[3] Ferguson, PX 6000, pp. 37-60, 78-124, and accompanying maps and exhibits.

The traditional land use system was predicated on the principle that all tribal members had access to farm land and grazing areas. Since the majority of tribal members derived their livelihood from agricultural pursuits, there were always a large number of people on the landscape practicing traditional soil and water control. It is the continual application of traditional techniques that made them effective.

The Zunis traditionally grazed their livestock over a large open range. This allowed stockmen to adjust to spatial variation in precipitation by moving their herds around the areas that received moisture, including large ranges off of the reservation. This reduced the impact of overgrazing.[4]

RECENT CHANGES IN ZUNI LAND USE

The Zuni land use system has changed substantially in the twentieth century, in large part due to the loss of the tribe's aboriginal land use area. The current Zuni Reservation includes less than three percent of the traditional Zuni land use area, and it is not capable of supporting all tribal members in an agrarian economy. The Zuni population has grown, and there is no longer enough farm land and grazing land for everyone. In response, the Zuni Tribe has diversified its economic base with jewelry making and wage labor.

With fewer people farming, there is less traditional water control being practiced on the reservation. Federal programs have emphasized mechanized agriculture dependent upon stored water in large reservoirs. As a direct result, the total acreage and topographical diversity of cultivated lands has greatly diminished, as has traditional water management on those lands.[5] The Zuni landscape is more susceptible to erosion.

As the Zunis lost the use of their traditional grazing lands off the reservation, overgrazing became a problem on the Zuni Reservation. Even though Zuni stockmen reduced the number of their livestock, the reservation was overstocked. Overgrazing contributed to severe erosion on the reservation, and all of the large reservoirs built on the reservation lost storage capacity due to siltation.

In the 1930s, it became necessary to regulate livestock. The open range was closed, and a permit system was instituted with assigned grazing areas to reduce the number of livestock. These regulations also limited the number of stockmen who could graze animals on the reservation, thus reducing the total number of people using the land. As with farming, with fewer people herding livestock, there is less traditional soil and water control.

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[4] Ferguson, T.J., "Rebuttal Report," 1981, expert testimony submitted as evidence in the case Zuni Indian Tribe v. United States, Docket 161-79L, (Ct. Cl., May 27, 1987), p. 1-26, maps, and appendices. (Hereinafter, Ferguson, Rebuttal Report, Docket 161-70L.)

[5] Ferguson, PX 6000, pp. 124-128, and accompanying exhibits.

The net result of changes in the Zuni land use system has been a significant reduction in the number of people practicing traditional soil and water control on the Zuni Reservation. This has had an adverse impact on the environment.

A PROGRAM FOR LAND REHABILITATION

A program is needed for land rehabilitation on the Zuni Reservation. The erosion and other damages that have reduced the productivity of the reservation need to be repaired now before they get worse.

Past governmental efforts to control erosion were initially effective, such as the Soil Conservation Service projects in the 1930s. These SCS projects entailed the construction of small structures similar to, and, in some cases, derivative from, traditional Zuni technology. These projects failed over the long run, however, due to a lack of follow-up treatment. Small water control devices need to be rebuilt when they wash out, and new ones constructed as sediments fill in behind existing devices. The government projects were a one-time treatment, whereas a continual program is needed to successfully control erosion.[6]

The Zuni Lands Rehabilitation Act will make it possible for the Zuni Tribe to implement a Resources Development Plan that will combine traditional and innovative technologies in land rehabilitation. The annual employment of a large work force for conservation projects will once again put Zuni people on the landscape on a permanent basis to continuously apply the techniques that have proven so effective in the past.

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[6] Ferguson, PX 6000, pp. 128-134, and accompanying exhibits.

DAMAGE TO ARCHAEOLOGICAL SITES BY ROAD CONSTRUCTION ON THE ZUNI INDIAN RESERVATION

Statement of T. J. Ferguson
Director of Southwest Programs
Institute of the NorthAmerican West

Submitted to the 101st Congress
For a Hearing on the Zuni Claims Settlement Act of 1990
S. 2203 and H.R. 4143

May 7, 1990

THE PROBLEM

Construction of a road through an archaeological site destroys irreplaceable artifacts and their associated archaeological deposits. Critical information about the stratigraphic context of archaeological materials is lost forever when sites are bulldozed. Where road construction does not entirely destroy an archaeological site, the remaining deposits are subjected to increased erosion that continues to damage the site. Cultural materials and human burials erode from unpaved road surfaces or from steep cut-banks where a road has been cut to grade through a hill. Routine road maintenance contributes to the continuing damage.[1] Drainage patterns created by roads can create erosion at archaeological sites located outside the road right-of-way, such as at the important fourteenth century village of Heshotauthla.

Archaeological sites on the Zuni Reservation are an important part of the cultural heritage of the Zuni people. Many of these archaeological sites are eligible for inclusion in the National Register of Historic Places, and merit protection under the provisions of the Historic Preservation Act of 1966. Many archaeological sites also contain cemeteries where the ancestors of the Zuni Indians are buried.. These burial sites need to be protected from further damage.

Current federal law protects archaeological sites in road right-of-ways during new construction, but the damage to archaeological sites from past road building continues unabated. While the damage to archaeological sites from road construction can never be repaired, it can be mitigated by scientific study of the remaining portions of the site, and management to prevent further damage.

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[1] Anyon, Roger, "Archaeological Mitigation of A Disturbed Burial at Site NM:12:Y3:313 along New Mexico State Highway 32, Zuni Indian Reservation, McKinley County, New Mexico," Zuni Archaeology Program Report 014-81M, 1981, pp. 1-99. (Hereinafter referred to as Anyon, "Archaeological Mitigation.")

Hayashida, Frances, M., "Preliminary Assessment of Damage to Archaeological Sites Caused by Road Construction and Maintenance, Zuni, New Mexico," 1987, unpublished ms. on file at Zuni Archaeology Program, Pueblo of Zuni, pp. 1-22, and accompanying maps. (Hereinafter referred to as Hayashida, "Damage to Archaeological Sites by Road Construction and Maintenance.")

THE EXTENT OF DAMAGE FROM ROAD CONSTRUCTION

Damage to archaeological sites by road building was first reported in 1916, when the construction of a road from Zuni to the BIA Agency at Black Rock exposed archaeological materials and skeletons.[2] Since 1916, road construction has continued to damage archaeological sites. Few road and highway right-of-ways on the Zuni Reservation have been adequately surveyed for cultural resources, so the exact number of archaeological sites that have been damaged by road construction is not known.

The work of the Zuni Archaeology Program shows that the problem is widespread. Damaged archaeological sites have been found in the right-of-ways of thirteen different roads on the reservation.[3] The BIA currently maintains approximately 340 miles of roads on the Zuni Reservation, and the State of New Mexico maintains 60 miles of highway right-of-way. The damage to archaeological sites has been adequately mitigated in only 20 miles of State Highway right-of-way, leaving 380 miles of roads and highways with unmitigated damage to archaeological sites.[4]

An estimate of the total number of sites with unmitigated damage by road construction can be generated from what is known about the archaeology of the Zuni Reservation. The average site density per mile of survey on the reservation has been computed from data collected in 17 archaeological investigations encompassing 163 miles of survey for roads, pipelines, transmission lines and other projects with linear right-of-ways. These data yield an average site density of .95 sites per mile of right-of-way. Actual site density varied from .1 to 4.8 sites per mile.[5]

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[2] Spier, Leslie, "An Outline for a Chronology of Zuni Ruins, *Anthropological Papers of the American Museum of Natural History*, XVIII, Part III, 1917, p. 234.

[3] Hayashida, "Damage to Archaeological Sites by Road Construction and Maintenance," p. 2.

[4] Letter from Roger Anyon, Director, Zuni Archaeology Program, to T.J. Ferguson, February 16, 1988.

[5] Ferguson, T.J., "A Resource Document for Cultural Resources Management on the Zuni Indian Reservation," 1986, prepared for the Pueblo of Zuni by the Community and Regional Planning Program, School of Architecture and Planning, University of New Mexico, Albuquerque, pp. 16-18.

These site density estimates are multiplied by the 380 miles of roads with unmitigated damage to archaeological sites to generate an estimate of the total number of archaeological sites damaged by road building. Using the average site density yields an estimate of 361 damaged sites. Using the high end of the range of actual site densities yields an estimate of 1,824 damaged sites. It is evident that hundreds of archaeological sites have been damaged from road construction on the Zuni Reservation.

PROGRAM NEEDED TO ALLEVIATE DAMAGE

An archaeological survey, data recovery, and management program is needed to alleviate the damage to archaeological sites from road construction. This mitigation program should include: 1) an inventory survey to locate all sites in road right-of-ways; 2) an assessment of the damage at each site, with recommendations for protecting sites from further damage; 3) a program of scientific data recovery to preserve important information that will otherwise be lost; and 4) a long-term tribal management program to implement recommendations for site preservation.

The cost of full-scale data recovery for all sites impacted by road construction would exceed five million dollars. An alternative to a complete data recovery program would be the preservation of as many sites as possible in place. This alternative could reduce the total amount needed to mitigate damage, but would require a commitment to long term funding of the necessary archaeological site management and protection program.

The Pueblo of Zuni operates a tribal Archaeology Program with the professional qualifications, skills, and personnel needed to implement the long-term program to rehabilitate damaged archaeological sites. The use of the tribal program to mitigate damage to archaeological sites from road construction will provide employment for Zuni tribal members at the same time as it preserves and protects significant cultural resources.

Congress has recognized the need to preserve and protect the nation's significant cultural resources in the Historic Preservation Act of 1966 and other legislation. The Pueblo of Zuni shares the concerns of Congress for preserving the archaeological heritage of Zuni for future generations of Americans. For more than a decade, the Zuni Tribe has actively sought to protect archaeological sites on its reservation from further damage from road construction and maintenance, but has been constrained by a lack of funding.

Although the federal government has a trust responsibility to protect cultural resources on the Zuni Reservation, it has been unable to fund the mitigation program needed to alleviate damage to archaeological sites from road construction. Passage of the Zuni Lands Rehabilitation Act will enable the Pueblo of Zuni to implement the comprehensive program that is needed to protect its cultural heritage.

Expert Testimony: Summary of Exhibit 7000

ZUNI LAND USE AND DAMAGE TO TRUST LAND

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When the U.S. Government assumed hegemony over Zuni land in 1846, these Pueblo people were subsistence farmers. Since prehistoric times the Zuni people have successfully managed the resources of their homelands. The Zuni are descendents of prehistoric Native Americans who first occupied New Mexico by 11,000 years ago as hunters of Pleistocene fauna and gatherers of plant food. They began food production with maize and squash crops some 3,000 years ago. The immediate prehistoric ancestors of the Zuni were already controlling the flow of water to their crops with dikes, dams, and spreaders and successfully managing their arable land.

The desecration of Zuni land has resulted from policy decisions by others without consultation with the Zuni and from disregard for Zuni traditions of resource management. Through the centuries the Zuni developed and adopted a number of water control techniques to practice dry farming, irrigation agriculture, and specialized gardening. By 1846 they grew corn, beans, squash -- crops known from prehistory -- and vegetables, wheat, and orchard fruits -- plants obtained from the Spanish. Farming was but one aspect of their land-use patterns. The Spanish also brought horses, burros, cattle, chickens, and especially sheep. In historic times the Zuni practiced their own form of animal husbandry.

Ethnoscience presents a method for discovering the techniques Zunis employed to manage water, useful plants, game animals, stock, and agricultural crops. It considers the dual factors of Zuni beliefs and the behavioral consequences of their cultural practices. Zuni traditions are learned by social scientists and historians through controlled comparison interviews. Zuni impact on the environment is recorded by scientific methods, photographs, and maps. Ethnoscience provides an holistic appraisal of Zuni-environment transactions.

The question of responsibility for damage to tribal land must be examined according to Zuni ethnoecology, a specialty within ethnoscience. The United States Government and its agents have ignored Zuni environmental perceptions. The Zuni recognized water as a divine fit that should not be wasted. They prayed for rain for their crops. Water was conserved in reservoirs or led to domesticated plants and even native pasture grasses by many techniques designed to concentrate water from large catchments, to retard its flow, and to spread it over the culturally managed landscape. Erosion was not a problem, but the Zuni did appreciate silt laden flood water to spread over their fields. Throughout the 19th century the Zuni farmed in upland drainages or at the mouths of small arroyos. By doing this they controlled water and concomitantly conserved the land. No evidence has been presented to demonstrate these traditional methods based upon their religion led to any erosion or to mismanagement of plant resources.

The Zuni often faced drought conditions. Their methods to concentrate water run-off or to collect discharge from springs led to some agricultural produce. No evidence has been presented that the Zuni population suffered from famine or that any deaths can be attributed to inadequate precipitation. The Zuni, in fact, did produce a surplus of corn by employing a mixed agricultural strategy and could on occasion sell it to the Government.

American visitors to Zuni and the Government's expert witnesses, despite evidence to the contrary, continue to believe that canal irrigation is the only effective method of corp production at Zuni. The Zuni had used irrigation before

Euro-Americans arrived along with other methods. Zuni agricultural methods complement the physical environment. The Zuni offer a serious lesson in arid land management for agricultural success without reliance on canal irrigation as the only means of crop production.

Nevertheless, a series of actions were taken by the U.S. Government without permission from the Zuni to make their farming dependent upon reservoir-canal irrigation. First, the Black Rock Dam was constructed. It destroyed a major religious shrine at a sacred spring. Second, the Zuni Irrigation project was established for nine miles west of the dam. The Government expected the Zuni to raise crop on clay soil that was least favored by them for their staple food, corn. The irrigation canal used earthen banks which were vulnerable to burrowing rodents and damaged by storm fed run-off. The Black Rock Dam project never worked as expected; after 1921 water was insufficient to reach all arable land.

Silting behind the dam limited its utility. The initial problem was the Government's failure to control clear-cutting of the forest off the reservation which led to siltation. By encouraging the Zunis to abandon their summer farming villages and to remain in Zuni all year, the hinterland was depleted of a sufficient number of farmers to control water flooding the tributaries, and the eventually unchecked erosion of the Zuni reservation. Ironically, "experimental methods" were employed by the Government to retard tributary erosion, even though these were the very same techniques the Zuni had long used to harvest run-off from rainfall and thus to prevent erosion.

Flood control devices built by the U.S. Government to provide irrigation water at Nutria and to control rangeland erosion were constructed improperly resulting in breaks and erosion from poorly designed spillways. Land has continued to be lost as a result of these uncorrected mistakes.

Zuni animal husbandry and sheep grazing practices must be understood in terms of cultural traditions and economic incentives. Traditionally, Zuni sheep grazed an area far greater than the present reservation boundaries. In winter the animals were brought to Zuni, many were slaughtered for the Shalako ceremony, and the remainder stayed concentrated in the fields around the pueblo. The land surrounding the village was grazed down as were the trails along the Zuni River leading to Zuni. In summer the sheep were dispersed to farming villages and sheep camps many miles beyond Zuni. No evidence has been presented to show that the summer pastures were mismanaged by the Zuni. Severe overgrazing of the entire reservation began in 1934 when the boundaries were fenced and when the now large Zuni flocks were confined to the reservation. The Zuni had been building their herd over the previous 50 years in response to external market opportunities for the sale of meat, hides, and wool. Government policy to restrict grazing to the reservation created an ecological problem beyond the control of the Zuni stockmen and forced the further abandonment of outlying farms. Only an imposed sheep reduction policy alleviated grazing pressure on the landscape. Zuni sheep management was sufficient when land was plentiful, but their success as breeders became a liability when grazing privileges, traditionally assumed or previously granted by the Government, were denied.

Traditional Zuni land-use practices including farming, plant collecting, and herding had preserved the land base. The Zuni were following long held religious beliefs. The imposition of policies by the U.S. Government and the forced disruption of a successful cultural adaptation to a fragile ecosystem quickly led to the frightful erosion of Zuni trust lands in the 20th century. Damage to the Zuni reservation has increased since the Government began to manage it with methods and policies that contradicted Zuni beliefs about nature and their practices of resource management.

SUMMARY OF CONCLUSIONS REGARDING STREAM CHANNEL INCISION ON THE ZUNI INDIAN RESERVATION, NEW MEXICO

May 7, 1990

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and
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1.0 EXECUTIVE SUMMARY

Research conducted by Geoscience Consultants, Ltd. (GCL) shows that at least 5,124 acres on the Zuni Indian Reservation have been damaged by stream channel incision since about 1880, and that the total area affected could increase to 10,000 acres or more if not remediated. In addition, at least 12,800 acres in watersheds on the eastern part of the Reservation have been affected by a water-table decline associated with stream channel incision.

The channel incision was primarily caused by increased runoff resulting from timber cutting and heavy grazing in the watershed of the Zuni River. Sediment starvation of the Zuni River in the area west of Black Rock Dam has also contributed to incision of channels in the western part of the Reservation.

Remediation or mitigation of the incision can be accomplished by the construction and maintenance of small-scale erosion control structures at selected locations throughout the river system. It may also be desirable to alter some land-use practices in parts of the Reservation to prevent further degradation of specific stream channels. Funding should be provided in such a manner as to ensure that these erosion-control measures are treated as long-term commitments rather than isolated short-term corrective actions.

2.0 INTRODUCTION

This report is submitted by Geoscience Consultants Ltd. (GCL), at the request of the Zuni Indian Tribe, as a brief summary of significant data and interpretations developed during an ongoing investigation of geomorphologic changes which have occurred on the Zuni Indian Reservation since 1846. The results of the GCL investigation are reported more completely in the report, "Changes in Geomorphology, Hydrology, and Land Use on the Zuni Indian Reservation, McKinley and Cibola Counties, New Mexico" (July 18, 1985), and in other reports presently in preparation.

2.1 STATEMENT OF THE PROBLEM

The Zuni Indian Reservation consists of approximately 408,000 acres (637.5 square miles) in western New Mexico. It is located on the southern edge of the Colorado Plateau, and the terrain consists of broad mesas dissected by alluvial valleys ranging from a few hundred feet to several miles in width. Land surface elevation ranges from about 6,000 to 7,700 feet above sea level. The climate is semi-arid, with a mean annual precipitation at Zuni Pueblo of about 12 inches per year, over half of which normally falls as rain from convective thunderstorms during the months of July through October. All streams on the Zuni Reservation flow intermittently, except for short reaches receiving discharge from springs.

Since settlement of western New Mexico by immigrants from other parts of the United States, significant ecologic and geomorphic changes have occurred in the area. These changes have affected lands which had been inhabited for centuries by the Zuni Indians, including those within the boundaries of the present Zuni Indian Reservation. Notable among the geomorphic changes was the development of deeply incised, steep- or vertical-walled channels in the alluvial valleys of the Zuni River drainage area, which includes almost all of the Reservation. The presence of such incised channels, which have been termed "arroyos" in the geological literature, has significantly altered land availability and land use patterns on the Reservation.

In addition to their direct effects on land use, the incised channels have caused local decline of the ground-water table in parts of the Zuni Reservation, thus limiting availability of water for agriculture and other uses. Large dams and reservoirs which were constructed at several locations on the Reservation have not proven adequate for provision of irrigation water because they were rapidly filled by sediment. In addition, the Black Rock Dam near Zuni Pueblo has contributed to degradation of tributaries entering the Zuni River below the dam through sediment starvation of the Zuni River below the dam.

2.2 METHODS OF STUDY

GCL has investigated the geomorphologic regime of the Zuni River system in order to evaluate the nature of the observed channel incision, its probable causes, the amount of land affected by channel incision, and potential methods of remediating the damage which has occurred. The work performed by GCL included analysis of historical photographs and documents, review of existing hydrogeologic literature, and extensive field work on the Reservation to measure, document and evaluate the present extent of land damages. Important sources used to determine the timing and extent of stream channel incision were field notes and plats of U.S. General Land Office surveys conducted between 1881 and 1912, and aerial photographs taken in 1934, 1937, circa 1957, 1964, and 1978.

Since preliminary evaluation of aerial photographs indicated that much of the fluvial system on the Reservation had become incised by 1934, the areas affected by channel incision were determined by examining the 1934 aerial photographs and plotting the incised reaches of streams on 1:24000-scale U.S. Geological Survey topographic maps. Average channel widths and depths were recorded on the maps, and the lengths of the incised reaches were measured using a digitizing graphics calculator. The area of the incised channels in 1934 was determined by multiplying the width and length of each channel segment, and adding the resultant areas. In addition, areas of unstable soil adjacent to incised channels were determined on the basis of channel depth and the stability characteristics of the alluvium, and these areas were included in tabulating the total land area affected by channel incision.

Field measurements of channel depths and widths were made on the Reservation during 1984 and 1985, using a compass and tape measure. These measurements both confirmed the observations previously obtained from aerial photographs, and allowed evaluation of the extent to which further incision and channel widening had occurred after 1934. Field observations and measurements also permitted evaluation of the various factors affecting the depth and width of incised stream channels on the Reservation.

3.0 TIMING AND EXTENT OF CHANNEL INCISION

3.1 WRITTEN AND ORAL EVIDENCE

The General Land Office surveys conducted in the Zuni area in 1881 and 1882 rarely mention the depths and widths of streams that were crossed during the survey traverses, and the depths and widths that are given are consistently much less than those observed today. Surveys conducted in 1911 and 1912, on the other hand, often give the depth and width of ephemeral stream channels. The depths vary from about 30 percent to as much as 100 percent of those presently observed, but channel widths are usually much less than the present widths in the same localities. These considerations suggest that significant channel incision began sometime between about 1880 and 1910. This estimate is also supported by the statements of elderly Zuni residents, who recall that in their youth, shortly after the turn of the century, channels were generally much smaller than today, and posed less of an impediment to travel and the movement of livestock.

3.2 PHOTOGRAPHIC AND FIELD OBSERVATIONS

By 1934, when the first large-scale aerial photographs of the Zuni area were made, many of the ephemeral stream channels had already been incised to approximately the depths observed at present, ranging from less than 5 to as much as 25 feet. The vertical walls of the deep channels clearly imposed a significant impediment to travel and livestock movement. The incised channels were beginning to broaden as meandering of the water flowing within them undercut the steep alluvial banks, but channel widths in general were still less than those observed today.

Examination of aerial photographs from years after 1934 and field observations made during the 1980s show that incised channels have in general continued to broaden during the period 1934-1985, some of them now being over 100 feet in width. Depths have increased only locally, because the depths achieved by 1934 were so great that the bedrock underlying the valley-fill alluvium was exposed in many localities, limiting further downward erosion. However, some headward cutting has increased the lengths of incised channels in tributary streams. Significant headward cutting of some channels was observed following rainfalls during early 1985 (Geoscience Consultants, 1985, p. 31).

3.3 AREAS AFFECTED BY MODERN CHANNEL INCISION

Based on data developed from the 1934 aerial photographs and field examination prior to the 1985 report, GCL calculated the total area affected by channel incision on the Zuni Reservation as 5,124 acres, of which 2,243 acres were arable lands and the remaining 2,881 acres were lands suitable for grazing and other traditional uses. This area includes the area of channels which were clearly incised as of 1934, and an allowance for areas adjacent to the channels, which are unstable due to undercutting and piping and subject to rapid erosion. These areas are clearly unsuitable for building construction, movement of farm or ranch equipment and similar uses. Gullying of fields and expansion of the existing channel system, if not remediated, could easily increase the total area damaged to 10,000 acres or more over a relatively short period.

4.0 DECLINE IN GROUND-WATER LEVELS

Water table declines have been associated with the incision of stream channels in parts of the Zuni Reservation. Due to the moderate to high permeability of the valley-fill alluvium, water-table elevations cannot be maintained at an elevation significantly higher than the stream bed, which acts as a drainage ditch since it is normally the lowest point of the valley cross-section. The Nutria and Pescado valleys in the eastern part of the Reservation have apparently suffered significant ground-water declines, affecting a total of approximately 12,800 acres. The volume of ground water lost from storage in these valleys is estimated at 38,500 acre-feet. Declines in ground-water levels due to the same causes have probably occurred in other parts of the Reservation as well.

5.0 CAUSES OF CHANNEL INCISION

Channel incision may be caused by any one or a combination of several factors, both natural and human. Prehistoric episodes of channel incision have occurred in many parts of the western United States, including the Zuni area, as indicated by stratigraphic and sedimentological evidence, and those episodes are presumed to have resulted from climatic or other natural causes. However, channel incision during the twentieth century has been related to specific human activities in many locations, such as the Santa Cruz River valley in Arizona (Waters, 1988), and is observed to coincide with major land-use changes, such as the implementation of heavy grazing, in others. GCL believes that human land-use changes are the dominant factor in causing the currently-observed channel incision on the Zuni Reservation.

5.1 GRAZING AND TIMBER CUTTING

Historical evidence gathered by Mr. E. Richard Hart and Mr. T. J. Ferguson indicates that large-scale timber-cutting in the Zuni Mountains, including the headwaters of the Zuni River system traversing the Reservation, began during the last two decades of the nineteenth century. In addition, the influx of settlers during that period increased the number of livestock being grazed on public lands in western New Mexico. Simultaneously, the Zuni were forced to concentrate their herds within a smaller area as lands which they had traditionally used for grazing were fenced or developed for other purposes. These events coincide with the initiation of channel incision on the Zuni Reservation.

The efficacy of both timber-cutting and of heavy grazing in inducing and enhancing stream-channel erosion and potential incision have been demonstrated in numerous studies (see Hornbeck and others, 1970, and Lusby, 1979). These factors undoubtedly contributed to the observed channel incision at Zuni, and are probably the primary triggering causes of the incision. Climatic fluctuations about the turn of the century could also have had some influence on runoff and channel incision, but detailed environmental analysis by climatologist and tree-ring specialist, Mr. Martin Rose, indicates that observed fluctuations during that period were apparently no greater than many other periods during the last several centuries in which channel incision did not occur. Since they affect large areas in the headwaters and throughout the drainage basin, timber cutting and grazing would have a pervasive influence on the entire Zuni River system, as is observed during the twentieth century.

5.2 EFFECTS OF DAMS AND RESERVOIRS

Man-made structures have locally had a significant effect on channel morphology and incision on the Zuni Reservation. There are a total of eight major dams on the Zuni River and its tributaries within the Reservation, and three dams upstream from the Reservation within the Rio Pescado watershed. There are also hundreds of small stock tanks and diversion structures on the smaller tributaries of the river system.

While providing limited amounts of water for irrigation and stock, some of the dams have also produced undesirable side effects. Since the reservoir behind a dam traps sediment flowing into it, the river reach immediately downstream from the dam receives a reduced sediment input, and consequently may suffer incision as sediment is removed from the channel and side slopes to replace the former influx of new sediment from upstream which was cut off by the dam. Tributaries flowing into the downstream reach may also suffer channel incision, as downcutting of the main stream initiates and enhances downcutting of the tributaries by lowering their "base level," the lowest level to which the streambed can be eroded, where they enter the master stream. Such incision has occurred primarily on the western part of the Zuni Reservation, below Black Rock Dam. Since it was completed in 1907, the maximum volume of water retained by Black Rock Dam has been reduced by over 13,000 acre-feet due to siltation of the reservoir. This sediment which has been trapped behind Black Rock Dam would have continued through the Zuni River system to maintain the previously-existing sediment balance in downstream areas. Instead, this sediment was removed by erosion from the Zuni River and its tributaries below Black Rock in an attempt by the system to maintain channel equilibrium despite the loss of its sediment supply.

6.0 POTENTIAL FOR MITIGATION

Because the damages due to channel incision have largely resulted from human land-management practices, they can be mitigated or remediated by human intervention at appropriate points in the fluvial processes of erosion and sedimentation. Such mitigation measures may include changes in land-use practices accompanied by careful scientific evaluation of the consequent effects on the fluvial system. Remediation efforts should also include direct intervention as necessary to improve channel quality in those areas already affected by incision.

Some of the small dams used for stock watering dispersed throughout the Zuni Reservation have had a beneficial effect on the channel morphology by tending to reduce peak flows during flood events and by eliminating large-scale flushing of sediment from the tributary streams on which they are located. Similar benefits have been gained from small erosion control structures built by the Zuni as part of their traditional land-management and irrigation practices, and from similar structures built during the 1930s under the auspices of Federal erosion control programs. The value of such small-scale erosion control structures has long been recognized by leading geomorphologists, and was specifically recommended in 1920 by George M. Post of the U.S. Indian Irrigation Service, as an appropriate technology for use at Zuni (Robinson, 1920, pp. 885-888).

However, any remediation undertaken at Zuni should be funded in such a way as to ensure that moneys are available for maintenance and repair of erosion control structures as necessary. Experience on the Reservation has shown that, if not properly maintained, such structures will not be effective in minimizing erosion problems, and may even be harmful in cases where they are damaged by floodwaters and not promptly repaired. Consequently, mitigation and remediation efforts must be considered as long-term commitments rather than as short-term corrective actions.

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TWENTIETH CENTURY EROSION AND LOSS OF AGRICULTURAL LAND ON THE ZUNI INDIAN RESERVATION

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April 23, 1990

Erosion is a natural process resulting in the gradual wearing away of the land. It has been recognized for a long time by geologists that rates of erosion may vary through time in response to various changes in climate and land use [1]. At the turn of the century, accelerated erosion affected vast areas of the Western United States including the Zuni Indian Reservation. During the twentieth century, the Zuni Tribe has lost about 10,000 acres of farmland due to erosion, a loss that is increasing yearly.

RAPID EROSION OF ZUNI INDIAN RESERVATION LANDS

Many lines of evidence, including maps from the 1911-12 topographic survey, the ages of trees growing in deeply eroded channels, photographs by early photographers, aerial photographs taken first in 1934, and the recollections of senior Zuni residents, all show that the early half of the twentieth century was marked by deep gullying of farmland in the Zuni River valley and its tributary valleys on the Zuni Indian Reservation.

ZUNI FARM PRACTICES

In 1940, observations at Bosson Wash, a tributary of the Zuni River, were published by Guy R. Stewart who at that time was senior soil conservationist with the Soil Conservation Service [2].

> Not far from Zuni is a field which was farmed by Zuni cultivators for many years and was pointed out as an excellent corn field [the field is shown on an 1893 survey map of the reservation]. About thirty-five years ago [1905], in the realignment of the reservation boundaries, this field was placed outside the Zuni lands and went out of tribal control. Now the former flat stream has cut a deep channel... which is approximately seventy-five feet wide and twenty to thirty feet deep.

Stewart describes Zuni farm methods, observing how "...this system of flood-water irrigation constitutes a wonderfully effective of gully control." Frank Hamilton Cushing described similar farm methods which he observed in operation during his residence at Zuni Pueblo from 1879 to 1884. Cushing also sketched a map of a Zuni cornfield, showing the lay-out of the field with its low dams and embankments [3]. From the geologic point of view, Cushing's and Stewart's observations that the Zuni way of farming prevents gullying are indeed accurate.

EARLY TWENTIETH CENTURY ATTEMPTS AT GULLY CONTROL

By 1928, gully erosion had produced such large quantities of sediment that the water-holding capacity of the Black Rock irrigation reservoir on the Zuni River was reduced by 69 percent [4]. Prof. Kirk Bryan of Harvard University (formerly with the U.S. Geological Survey) provided a valuable technical account of the geological conditions of the Zuni River valley in the summer of 1928 [5].

> Upstream from the [Black Rock] reservoir except where basalt interferes the arroyos of Zuni River and its tributaries, Nutria and Pescado Creek, have for 26 years [since 1902] been widening and deepening. The streams no longer overflow their banks during floods and the erosion of the former floodplains has contributed the larger part of the silt which has poured into Zuni reservoir.

In 1923 and 1924, in response to the catastrophic gullying and siltation of the Zuni reservoir, the Indian Irrigation Service built a number of erosion and silt control structures upstream from the reservoir on Nutria and Pescado creeks. Kirk Bryan inspected these structures in 1928, and his observations presented in his unpublished report provide valuable insight to some of the problems of erosion control on the Zuni Reservation [5].

> In 1921 and 1922 reconnaissance by George M. Post indicated that lateral cutting on Nutria Creek was very active and that headward erosion of tributary arroyos was menacing the wide valley flats.
>
> Checks were built on the tributary arroyos [to Nutria Creek] in 1923 and 1924. The checks at the very heads of the arroyos were in most instances successful in preventing further headward enlargement of the arroyos up to 1927. Inspection this year [1928] shows that many of these checks are in need of repair. Some still hold; others are partly undermined or a channel has been cut around one end; others have been washed out and the arroyo is enlarging headward rapidly.
>
> The checks in the lower portions of the arroyos must of necessity stand the overpour of larger quantities of water, under a greater head. Many of these checks built in 1923 were washed out or washed around in 1924. Several have since been lost and a few that were in place and holding back silt have been lost since 1927.

Bryan concludes his report with advice that the erosion and silt control structures require constant maintenance if they are to be effective [5].

> However, constant vigilance in the maintenance of structures and in the extension of the system are necessary. A regular annual appropriation should be provided to carry on the work, else the present accomplishments will be lost...

PRESENT-DAY EROSION

Kirk Bryan's 1928 report is quoted extensively because of the special insights it provides. I have made identical observations during my geologic field work on the Zuni Reservation during the past five years. Indeed, conditions today are worse than during Bryan's time. Gullying has spread to new areas in the upstream portions of Bosson Wash and Nutria River. The erosion presently taking place along the Nutria River is cutting through valuable farmland near Upper Nutria village. Lateral widening of old channels in every major and minor tributary to the Zuni River is continuing through the processes of piping and headward cutting of small tributaries.

CONCLUSIONS

1. Traditional Zuni farming methods maintained the land, preventing gullying.

2. Erosion and gullying during the 20th century has resulted in the loss of 10,000 acres of the most valuable farmland on the Zuni Indian Reservation, greatly reducing its agricultural and economic potential.

3. Erosion control efforts during the 1920's illustrate that erosion control is feasible and can be successful.

4. The failure of erosion control measures implemented in the 1920's and more recently is due largely to lack of regular maintenance. Erosion is continuing today.

RECOMMENDATION

A reclamation program of soil erosion control encompassing the entire watershed of the Zuni River, most of which occurs within the Zuni Indian Reservation, will halt present-day erosion and will eventually heal older erosional scars. An erosion control system will require annual maintenance if it is to succeed.

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Summary of Recent Climatic Research on the Zuni Reservation

by

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Expert Statement before
The Senate Select Committee on Indian Affairs
Relative to S. 2203
May 7, 1990

The nature of recent and long term climatic variability on the Zuni Reservation has assumed a position of major importance in expert witness testimony submitted to the United States Claims Court in the case Zuni Indian Tribe vs. United States, Docket 327-811 (Ct. Cl., filed May 12, 1981). Recent climatic variability can be analyzed using instrumental records dating to the turn of the century, and even earlier at a few locations. Long term climatic variability can be addressed using dendrochronological and dendroclimatological techniques. Rose [1] examined the present and past climate of the Zuni region, addressing two main questions. The first concerned the characteristics of monthly, seasonal, and inter-annual climate using instrumental records from Blackrock, New Mexico. Records from El Morro, Ft. Wingate, Grants, Bluewater, San Fidel, and Marquez were examined as a region to determine the average conditions and range of variability experienced during recent years. The Ft. Wingate data set is especially crucial because the temperature and precipitation records begin in 1863 and 1869, respectively.

The second topic of interest centered on placing the climatic variability of the nineteenth and twentieth centuries in a long term context. Reconstructions of precipitation and the Palmer Drought Severity Index (PDSI), derived from the annual index values of drought sensitive tree ring chronologies in the Four Corners region, provide a tool for investigating climatic conditions at Blackrock and the surrounding area for the past 1,000+ years. The reconstructions demonstrate that the climatic conditions from 1846 until the present lie well within the range of variability of the past 1,000+ years. The techniques used to produce these long term reconstructions are described by Rose [1].

Balling [2] produced an analysis of precipitation patterns for the Zuni Indian

Reservation region during the period of instrumental record. His analysis was predicated on instrumental precipitation records from (1) Blackrock and Zuni, (2) Crownpoint, (3) Fort Wingate, (4) McGaffey, and (5) St. Johns. PDSI values used in his study were from NOAA (National Oceanic and Atmospheric Administration) calculations for the Northwestern Plateau climate division, which includes not only the Zuni Reservation, but also the area to the Colorado border. Balling analyzed variability in annual (January to December), summer (April to September), and winter (October to March of following year) total precipitation amounts, precipitation days, and the number of days with precipitation greater or equal to 0.50, 0.75, and 1.00 inches.

Ballings' analyses led to two fundamental conclusions. The longest and most severe drought in the 1897 to 1985 period extended from 1898 to 1904, abruptly ending in 1905; and that the next few years had high numbers of summer rainfall events. Secondly, from the early part of the instrumental record to the recent sub-period, changes included a decrease in precipitation amounts, an increase in precipitation days, and a decrease in the number of days associated with high rainfall amounts.

Balling did not use the earlier precipitation or temperature data available for Ft. Wingate that was analyzed by Rose [1]. It would have offered a greater time span covering the period prior to the drought interval at the turn of the century. Analysis of the early Ft. Wingate data by Rose shows a period of high annual precipitation in the late 1860's and the early 1870's. This interval of high annual (October of current year to September of following year) precipitation is greater than any after the turn of the century to the present. The increase in annual precipitation was due primarily to an increase in winter precipitation in the late

1860's and early 1870's. In the late 1860's however, there was also a period of high summer precipitation greater than that in the 1900 to 1910 period.

Jacoby [3] also investigates the past 1,000 years of climate on the Zuni Indian Reservation using dendroclimatological techniques. With the exception of one tree-ring chronology, the dendrochronological database was the same as that used by Rose [1]. Jacoby concludes that the wet period in the early part of this century is the longest in the reconstruction, and that the late 1890's to 1904 dry period is one of the most continuous and severe in the record. However, he also notes that it is exceeded in prolonged severity in the late 1500's and the 1950's.

There are several factors in Jacoby's study that merit further attention. First, both Jacoby [3] (p. 37) and Balling [2] (p. 9) incorrectly state that Rose [1] used average meteorological data representing the complete Southwestern Mountains Region. Rose used data from Blackrock and Ft. Wingate in the Northwestern Plateau climatic division and Grants, Bluewater, Marquez, and San Fidel in the northern part of the Southwestern Mountains region. However, these latter three stations are in fact closer to Zuni than most of the stations in the Northwestern Plateau climate division used by Jacoby and Balling, which also includes a large number of stations in its northernmost reaches just south of the Colorado border.

Jacoby goes through great detail to test the correlations between the Zuni area and the Northwestern Plateau and Southwestern Mountain regions, and he finds the Northwestern Plateau records generally have a higher correlation with Zuni than the corresponding data from the Southwestern Mountain region. On this basis he [3] states that my use of the SW

Mountains division data is incorrect and has the potential for producing misleading results. It is for exactly this same reason that I did not use the regional average from the Southwest Mountain division, but rather the data from the five individual stations mentioned earlier.

A second factor which must be explored is the data on which the Northwestern Plateau regional average is calculated. The data from 1931 to the present are based on observations from meteorological recording stations, that is, actual data. The data from 1895 to 1930 is based on a regression estimate derived from the New Mexico state average. The quality of the post 1930 relationship between the Northwestern Plateau climate division and the New Mexico state average is not described, hence it is difficult to evaluate how representative the 1895 to 1930 estimate is of the actual data.

It is not surprising that the statistical relationships Jacoby establishes between the tree-ring data and the Northwestern Plateau regional precipitation average and PDSI series yield reasonable calibration and verification values. In comparing his regional reconstruction to the station specific reconstruction from Blackrock, it must be noted that the regional reconstruction has a larger macroclimatic signal than an individual station like Blackrock, which contains more localized information. It has been repeatedly shown that grids of tree ring chronologies calibrate better with regional averages than single station records. Jacoby does not demonstrate that the Northwestern Plateau record is more representative of the Zuni region than the Blackrock record or the regional five station average used by Rose [1]. The reconstruction developed by Rose was specifically based on the Blackrock record since that is the immediate area of interest in the current litigation.

Citations

[1] Rose, Martin Exhibit 5000, Present and past climate of the Zuni Region. Expert witness testimony submitted to the United States Claims Court as evidence in the case Zuni Indian Tribe v. United States, Docket 327-81L (Ct. Cl., filed May 12, 1981). September 13, 1985.

[2] Balling, Robert C. Jr. Exhibit 15,000, Analysis of Zuni Indian Reservation Precipitation Patterns During the Period of Instrumental Record, May 1987.

[3] Jacoby, Gordon C. Exhibit 14,000, Dendrochronological Investigation of the Zuni Indian Reservation, May 1987.

SUSTAINABLE DEVELOPMENT AND NATIVE PEOPLES:
A Statement in Support of S. 2203

by

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International Union for the Conservation of Nature
and Natural Resources (IUCN)
Commission on Sustainable Development

Before the Select Committee on Indian Affairs
United States Senate

May 7, 1990

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The Earth is the foundation of Indigenous Peoples. It is the well of their spirituality, knowledge, languages and cultures...The Earth is their historian, the cradle of their ancestor's bones, it provides them with nourishment, medicine and comfort..."

From: Recommendation No. I, Workshop 13,
Conference on Implementing the World
Conservation Strategy,
Ottawa, Canada, May 31-June 5, 1986

Introduction

With this compelling testimony, delegates to the Ottawa Conference recognised the distinctive relationship of indigenous peoples to the living Earth, and recommended that the World Conservation Strategy reflect their unique environmental ethics and rich traditional knowledge. Several supporting recommendations were also made to give effect to this perspective. At present, a folio on the interrelationship of indigenous peoples and the World Conservation Strategy is being drafted for incorporation into the revised edition of this document.

The form this relationship might take is the theme of discussion here. A broad perspective is outlined on the rationale and options for a closer associations between native interests and environ- mental ideology. It will be argued in particular that the first peoples of North America have much to contribute to the World Conservation Strategy (WCS) and something to gain from its message of sustainable development. This introductory essay is meant to accompany a case study of the resource use and management practices of the Zuni Indians of New Mexico, and is intended to support the efforts of the Zunis to prepare a model plan for their tribal lands in the western United States of America.

Environmental Problems of the "Fourth World"

As its name implies, the World Conservation Strategy was prepared in response to global problems of environmental deterioration. Living species--plants, animals, and micro-organisms--essential to economic development and human survival are being destroyed at an alarming and accelerating rate. Much of the concern, in this respect, is focused on the plight of developing countries, where the rural poor are driven to destroy the very natural resources on which they are dependent for food and shelter. The industrialised countries, by contrast, experience problems associated with the side effects of affluence and consumption: cumulative increases in air and water pollution, reductions in soil capability and wildlife habitat, and so on.

On this continent, indigenous peoples are familiar with and affected by both types of problems--uniquely so in some respects. Despite recent efforts, many native communities remain economically depressed and dependent upon government assistance. As a result, Indian and Inuit organisations in Canada have begun to refer to themselves as the "fourth world." This term aptly conveys the duality of their culture and economy, bridging the modern and the traditional. It also encapsulates the nature of the challenge encountered in the management of tribal lands and resources in a technological age. This is our point of departure.

A land base remains of paramount importance to the way of life and livelihood of native peoples. It defines and sustains them. Without land and its associated resources, animals to hunt and plants to harvest, the source of native identity and being as a distinctive peoples is irreversibly lost. The struggle for survival by the indigenous peoples of North America, in the face of official policies and popular attitudes ranging from hostility to indifference, is a long and often tragic story. It is capable of interpretation in environmental as well as political terms.

For native peoples, the course of western settlement was an ecological as well as cultural tragedy (and the two, of course, are interconnected). During and after the frontier era, into the early years of the twentieth century, the predominant theme of the eco-history of native people was the dispossession of their tribal estate. Under the policies of the US Allotment Act, for example, Indian land holdings were reduced from more than 140 million acres in 1887 to approximately 48 million acres in 1931. This loss of land base had enormous repercussions on native peoples which are still being felt today.

A counter process of aboriginal (re) entitlement is now underway. The progress being made toward the settlement of native land claims varies. While there is a characteristic gap between political rhetoric and legal reality, this process does seem to be partly redressing past expropriations. Yet compensation for the loss of lands is not the same as their restoration. Neither is it a substitute for sovereignty over the resource base. Most tribes in the US are still struggling to claim the administrative powers and rights to control their own lands and lives.

Exercising control is a vital requirement if American native peoples are to cope with the impact of external developments. This process is typically incremental, often insidious, and cumulative in the erosion of resource, cultural and economic values. It can be illustrated by recent trends in the American Southwest, which has been called "a region under stress." During the past twenty years, a major influx of population and industry has occurred. Regional growth thus created a range of environment-development conflicts, notably conflicts involving water supply, quality and allocation constraints, all of which threaten fish and wildlife resources. Native communities by reason of their direct and continuing ties with these resources, are particularly vulnerable to the changes introduced by deep rooted socio-economic trends.

The three themes in the eco-history of native peoples, underlined above, are interrelated and reinforcing. Existing reservations are small compared to the traditional areas of use and occupancy. And the sad irony is that native groups lack full jurisdiction over the former, let alone the latter. In the final analysis, the problems of land and resource management reflect environmental interdependency as much as political dependency--on what Alvin Josephy, Jr. has called "the dead hand of the Bureau of Indian Affairs."

What this fact signposts is the end of the isolation of tribal reserves from the surrounding region and society. This trend may be painful, given the past legacy of exploitation, neglect and conflict. At a time when the federal government is reducing funding, however, native peoples must increasingly rely on and develop their own resources, both natural and human. The nature and scope of "fourth world" problems also means that it is unlikely they can act alone. Effective policies for tribal land management will have to incorporate new philosophies of cooperation and partnership for economic development. Yet these must also be ground in the prevailing culture and ensure continuity of choice of traditional lifestyles based on hunting, trapping and gathering. It is in this regard that the World Conservation Strategy can help, suggesting ways and means by which native goals and aspirations can be achieved and sustained.

The Perspective of the World Conservation Strategy

The World Conservation Strategy (WCS) has become a guiding document for resource and environmental management. Approximately one thousand experts from all parts of the world were involved in drafting the contents. The Strategy has been endorsed by a growing number of international organisations and national governments of all political stripes. Much of this interest in it stems from the redefinition of the relationship between development and environment issues, and the recommendations for integrated approaches for dealing with them.

Sustainable development is the shorthand term for the redirection which is being promoted. It emphasises the importance of maintaining the natural resources and living species upon which human livelihood (and life) ultimately depend. A clear statement of priorities and actions for achieving that end is made. The WCS is aimed at the government policy makers and their advisors, the development sector, and conservation and related interests, including all those directly responsible for natural resources management.

The basic objectives of the World Conservation Strategy are:

1) to maintain ecological processes, such as soil regeneration and nutrient recycling;

2) to preserve biological diversity, recognising the value of all living things; and

3) to ensure the sustainable use of plants and animals.

These three goals are similar, in spirit and purpose, to those traditionally held by native Americans and Canadians.

Work currently in progress on updating the Strategy specifically focuses on and amplifies the role and place of indigenous peoples. It notes, for example, that conservation has always been integral to their survival. The resource use and management practices of native peoples are the product of a millennia of adjustment, in which the margins for error were narrow, and the penalties for failure were high. As a result, there is much to learn from traditional systems of experience and local knowledge, based on detailed understanding of species, behavior and relationships. The subsistence activities of the original peoples, too, emphasise and exemplify an ethic of mutual sharing and support, which is now being recognised as an important aspect of sustainable development by other sectors of North American society. In this respect, the wheel of environmental ideology has come full circle.

The future options open to indigenous peoples are also the subject of discussion in the revisions to the WCS. For Native Americans, it should not be automatically assumed that only two avenues exist: either a return to traditional ways or assimilation into the mainstream of society. A third approach made up of various permutations of the old and the new is put forward as more reasonable and relevant. The WCS is based on the premise that paths to sustainable development should reflect the cultural and social traditions of those applying them, as well as taking into account the capabilities of the resource base. Only native communities themselves can define their goals and policies for development and the vision of identity which underlies them.

A framework of principles and procedures for achieving these objectives is contained in the WCS and its recent updates. The preparation of community-based strategies for sustainable development provide a particularly relevant instrument for planning the use of tribal lands. Such strategies have the following characteristics:

1) they are directed first and foremost at meeting basic needs, for food, shelter and clothing;

2) they emphasise self-reliance, seeking to break the cycle of dependency on outside assistance;

3) they are built on and extend local knowledge and traditional skills;

4) they incorporate and adapt appropriate technology, by blending indigenous and imported use and management practices; and

5) they require local institutions and grass roots participation to identify and implement development needs.

Tribal lands, of course, often encompass a range of renewable and non-renewable resources much in demand by urban society. In many cases, reserves can accommodate uses other than traditional activities. Community-based strategies for sustainable development do not ignore these opportunities; rather the emphasis is on integrating them in a way which does not undermine subsistence needs and delivers a continuing flow of economic benefits.

For this to happen, an integrated and adaptive process of development planning and environmental management is required. The WCS sets out a recommended approach, part or all of which may already be undertaken by or on behalf of native communities. At a minimum, some procedure for land use allocation, based on analysis of the resource base, will be necessary. Non-renewable resource exploitation and the construction of capital projects--dams, roads, pipelines--should be subject to benefit-cost analysis and to environmental impact assessment. Project siting, design and implementation can then be undertaken in a manner which minimises resource, cultural, and economic impacts and risks. Public participation is recommended at the main stages of the decision-making process, not just in the establishment of development goals and priorities. Finally, the proponents of the WCS recognise that research, training and education programmes will probably be needed to support the implementation of this process. In some cases, this approach will require new forms of collaboration; for example, the integration of traditional knowledge with technical analysis. And in every case, planning will require a greater investment of scarce human and capital resources.

Even with this caution in mind, native leaders might still profit from a careful look at the approach outlined above. At present, there is an acknowledged need for communities to formulate their own plans for tribal lands instead of relying on externally-driven grant opportunities. Many bands, of course, already have comprehensive socio-economic development plans in place. In that case, the preparation of community-based development strategies should build on and extend them.

A Closing Statement

The critical need for Native Americans today, according to Roger Buffalohead, is for a sustainable future as much as a usable past. It is a telling statement. A sustainable future, put simply, is what the World Conservation Strategy is all about. For native peoples, this document encourages a search for options which mesh valued continuity with needed change. Past government policies for native economic development seem to have failed because they did not take into account the world view of Indian tribes, how they saw themselves, their culture and their homeland. Community-based sustainable development strategies, by contrast, start with the goals peoples hold and seek to support, not loosen, their particular ties with land. They are aimed at sustaining the cultural ecology of resource use and adapting this process to new times and changing circumstances.

Wherever possible, the International Union for Conservation of Nature and Natural Resources, through its Commission on Sustainable Development, will lend technical assistance to native organisations interested in designing and implementing such strategies. A pilot or demonstration project involving the preparation of strategy for a candidate reserve, may be the most effective means of developing this form of collaboration. The case study of Zuni lands, to be appended to this essay, was drafted partially with this prospect in mind.

A working alliance between natives and conservation interests has much to commend it.

Both can learn from each other, directly and as part of the broader network of relationships that each much build with other constituencies within government, industry, and among private landowners. The original peoples of North America, in certain respects, were the first conservationists (though they did not always walk lightly on the land!). Only now are environmental planners and others beginning to recognise that so-called "traditional" resource use and development practices may be far more sophisticated and innovative than previously thought. This process of adjustment and adaption, and its play over time and space, secondly deserves to be more closely analysed and the lessons disseminated beyond just the confines of native society.[*]

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[*] This closing statement suggests a beginning rather than an ending. The IUCN, through its Commission on Sustainable Development, welcomes further dialogue. It is my understanding that IUCN will support the efforts of the Zuni people to prepare a Conservation Strategy for their tribal lands and would ensure the results are communicated to others who stand to benefit from the experience.

SUMMARY AND ANALYSIS OF TESTIMONY BY ZUNI ELDERS

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May 7, 1990

DEPOSITIONS OF ZUNI ELDERS

This report summarizes and analyzes twenty (20) depositions, totaling nearly 1,300 pages of testimony. These were taken at the Pueblo of Zuni during September 1984 in conjunction with Docket 327-81L and 224-84L, a case filed by the Zuni tribe in the U.S. Court of Claims seeking compensation for damages to Zuni land. Deponents were Zuni elders, some of whom spoke good English; others required the assistance of an interpreter at least occasionally. The youngest was 57 at the time of deposition, the oldest 101; between these extremes, the ages of the other deponents ranged from 67 to 89. All could confidently remember the time of their youth, around 1910 to 1920. Deponents included Zuni farmers and stockmen, former tribal councilors and governors, and the tribal governor at the time of the depositions, Robert E. Lewis.

Because the deponents' sense of veracity restricted their remarks within the limits of their own personal experience, one must synthesize the individual perspectives which characterize these depositions in order to develop a overall Zuni picture of landuse patterns and policies. Such a synthesis indicates that a Zuni sense of past land use is clearly marked by three distinct phases:

(a) a period prior to the turn of this century when Zuni life was dominated by traditional farming and herding practices, complemented by traditional Zuni conservation techniques;

(b) a period of intensive pressure by the U.S. government, initiated at the beginning of this century, when both the Zuni people and their tribal economy were the object of landuse policies and practices designed to fundamentally alter Zuni life;

(c) a more recent period of time, from World War II to the present, in which the Zunis' focal experience is of a landscape degraded by the very government policies and practices purportedly aimed at improving it.

The following summary reviews the depositions of Zuni elders in these three areas.

TRADITIONAL ZUNI LAND USE AND CONSERVATION PRACTICES

By the end of the nineteenth century, the Zuni people had evolved a balanced economy based on farming and herding. They had managed to successfully accomodate newer occupations, such as raising livestock, with aboriginal Zuni land uses. One reason for this was that Zunis had developed traditional conservation techniques which matched their agricultural technology. As a result, deponents testified, their parents' labor on the land was successful and productive.

The principal method of Zuni farming involved using the digging stick, or "wooden leg," to make a small hole in the loamy soil into which the farmer dropped several seeds. The mainstay crops were corn, beans, pumpkins and melons. Cultivated areas were in the flood plains of shallow washes, watered by rain and run-off. The digging stick was preferred over the plow for this form of agriculture, which is more properly called "flood plain irrigation" rather than the more common but misleading name, "dry farming":

> [T]his stick planting was used a long time ago ago, for a long time. The reason why they used that was in the area like a flooded area farms [t]hey didn't want to turn it [the soil] over like you--you would with a plow....And when you put that seed in, then you--you tap it with that stick again and you don't bother the area around it to dry up fast. It just holds the moisture like it is if you didn't bother the ground. (S. Ondelacy, 9/19/84 : 55-56)

Flood plain irrigation also supported productive Zuni peach orchards.

The effectiveness of flood plain irrigation was increased by the Zuni practice of creating small diversion dams, either by scraping up a thin layer of soil or by sticking small branches into the bed, which would catch brush and silt carried down the wash. Set across the wash bed, these devices would slow the rush of water (thus reducing channeling), catch silt, and spread out the water, thus increasing the area under irrigation. (S. Eriacho, 9/17/84 : 22-23; M. Harker, 9/21/84/ : 12).

Zunis also had other ways of watering their crops. In some areas they practiced ditch irrigation by developing springs and creating channels to direct spring water to adjacent fields. The amount of land under this ditch irrigation was very small compared to that supported by flood plain irrigation. Near the Zuni River, they also carried water in pots to small "waffle gardens" -- raised, earthen walled beds, about three feet square.

From aboriginal times to the present, farming was complemented by gathering wild foodstuffs, such as pinon nuts and a variety of herbs (Calavaza, 9/21/84).

The Zunis were introduced to sheep and cattle in the historic period and by the end of the nineteenth century had sizeable herds which they incorporated into the economy. Prior to the boundary fencing of the reservation in 1934, some Zunis let their cattle graze off the reservation among the cattle of their non-Indian neighbors. Indians and non-Indians would cooperate in fall roundups and cut their own stock out of the general herd at that time (S. Eriacho, 9/17/84 : 16). Sheepherders also grazed their flocks off the reservation and moved seasonally from lower to higher elevations to pasture their flocks. (Harker, 9/21/84 : 21). Deponents do not confirm the popular conception that overgrazing was a problem in the first two decades of this century, but argue instead that pasture rotation and grazing on off-reservation leased land prevented widespread overgrazing:

> The whole thing [fencing] stemmed from the idea that our land was overgrazed. And generally when studies were done, a real walk into the interior was never done by the people that made the surveys. They generally saw what they saw along the road driving along, and I think this was something that gave them the idea that the whole reservation was overgrazed, which was not true. (Lewis, 9/22/84 : 100)

In addition to incorporating measures in their agricultural and pastoral practices to conserve range quality and moisture, the Zunis took direct steps to mitigate any natural damage. The most obvious of these is the development of a distinctive "gulley plugging" technique for reversing the effects of arroyo cutting. Lengths of split cedar wood were set into a trench cut across the arroyo channel and angled into the direction of flow. Brush was laid on top and the layer was secured with rock. Several layers were thus constructed. The structure thus built would dissipate most of the force of the flow while catching the silt, which added to the structure's ability to withstand subsequent flows. (Mahooty, 9/25/84 : 8-9) This effective aboriginal conservation technique was later taken over by the ECW (Emergency Conservation Work) program at Zuni during the late 1930's. (Walela, 9/18/84 : 13-14)

Zuni conservation technologies, like "gulley plugging" and diversion dams, were effective because they were matched to the land use practices within which Zuni agricultural and pastoral practices had evolved.

AMERICAN POLICIES AND TECHNOLOGIES

The introduction by the Bureau of Indian Affairs of new land use policies, practices and technologies began well, for the most part. In the end, however, they dramatically altered the Zuni domestic economy and caused serious damage to reservation land.

The Black Rock Dam, completed in 1908, was an integral part of a program to reform Zuni agriculture. Other elements included an irrigation canal system fed by the dam, demonstration farms for both irrigated and "dry farming," and promotion of the steel plow and other contemporary agricultural machinery. (Calavaza, 9/21/84 : 7; Ghaccu, 9/25/84 : 7). Together they formed an impressive technology for preparing, cultivating and watering fields, one which quickly replaced the "wooden leg" and flood plain irrigation which had proven so useful in the era prior to irrigation. With at least three good irrigations during the growing season (Lewis, 9/22/84 : 25), water was plentiful, and so-called dry farming was practically abandoned. (Ghaccu, 9/25/84 : 16)

Dams were not constructed in the watershed above Black Rock until some fifteen to twenty-five years later, by which time serious siltation was well underway. The McGaffey Dam, the Nutria Diversion Dam, and the Nutria No. 2 Dam all have broken in the past, and though repaired, these sudden discharges of large volumes of water caused further channeling of the downstream riverbed. (F. Bowannie, 9/21/84). The Black Rock Dam, originally more than twenty feet deep, now holds less than four feet of water, the remainder of the depth being silt. (Lewis, 9/22/84). Runoff from the mountains at the top of the watershed has frequently overrun the tops of the dams because silt has greatly reduced their carrying capacity and spillways are quickly blocked with debris. (Lewis, 9/22/84 : 36). This runoff problem is aggravated by the lack of conservation practices on land adjacent to the reservation which ranchers lease from the Bureau of Land Management. (Lewis, 9/22/84 : 33)

In 1934, a boundary fence was constructed around the reservation, and the numerous Zuni herds, which once grazed outside the reservation on leased land, were forced inside. Effective stock reduction was not implemented until the early 1940's (Eustace, 9/24/84 : 10-11; Harker, 9/21/84). Governor Lewis believes that overgrazing did not become a problem until this particular period when Zuni herds were compelled to graze on the much reduced pasturage within the boundary fence. (Lewis, 9/22/84 : 100-02) Because stock reduction evaluated animals in terms of their impact on the range, larger animals were severly impacted. With one horse rated the same as five sheep, the workhorse was frequently sold off and the five profit-making, wool-bearing sheep retained. This depletion of large draft animals was hastened by the mechanization of irrigated agriculture.

Another major impact came with road construction. Improperly engineered roads contributed to water management problems. (F. Bowannie, 9/21/84 : 24). Several roads constructed by the BIA had either no culverts, improperly placed culverts or culverts that were too small. These caused water to undermine roadbeds and wash them away. (S. Eriacho, 9/17/84). The raised roadbed of NM 53, the principal paved east-west highway on the reservation, is improperly drained. The Zuni River parallels then passes under NM 53 and has caused flooding of the high priest's house on several occasions and threatens the housing development at Black Rock. (Lewis, 9/22/84 : 33, 37)

In sum, the depositions consistently identify four major factors as contributing to the degradation of the land and loss of productivity: (1) water management technologies, such as dams and irrigations systems; (2) mechanical agricultural technology, including the steel plow and a variety of mechanized equipment for cultivating, harvesting, etc; (3) range management programs, especially boundary fencing and stock reduction; and (4) improperly engineered road construction.

A SCARRED LAND, A BATTERED ECONOMY

These changes in land use policies and practices have caused serious and substantial harm to the Zuni physical environment and thus to the tribal economy. This degradation has taken three forms.

There are a series of impacts related to poor water management, resulting from ineffective water management structures and of the lack of conservation measures on government-held forest and ranch land adjacent to the reservation. (S. Eriacho, 9/18/84 : 26) First, extensive and severe arroyo-cutting has taken place in the Bosson Wash, Oak Wash, Nutria and Ojo Caliente watersheds. (Lewis, 9/22/84 : 31-33). This has caused the loss of valuable farm and range acreage. Second, as silt is transported further and further downstream, the older watercourses are modified. In the Oak Wash area, some have been rechanneled and now cut arroyos through what was formerly productive farmland. (Lewis, 9/22/84 : 83). Gully-cutting has rendered many former flood-plain fields useless. (Tsebetaye, 9/24/84 : 10). Third, siltation or redeposition of wash-out blow sand has ruined much topsoil. It takes years to effectively mix that layer of choking sand back into the soil. (Lewis, 9/22/84 : 31) Finally, poor engineering of reservation roads has led to unintended impoundments, flooding and gulley-cutting.

The second impact is related to the introduction of new agricultural technologies. The steel plow and tractor, so welcomed at first in an era of plentiful water, quickly displaced the digging stick. As the Black Rock Dam and irrigation canal silted up, however, Zuni farmers found themselves hampered by a technology ill-suited to drier conditions: "I planted it [the field] with a tractor one time, a regular tractor. But just like I said, it dried up the farm -- I mean the field, real bad. It didn't rain and it didn't do good with the crop." (S. Ondelacy, 9/14/84 : 59) With the transition to irrigated agriculture came higher operating costs. Initially, these were reduced by hiring out rather than purchasing equipment. This too required cash, however, which was never plentiful in the Zuni economy, especially in the Thirties and Forties, and so put economic pressure on smaller farmers. The negative effects of this dependency on cash and machinery were exacerbated by stock reduction policies which fostered the elimination of the large draft horses which Zunis formerly had used. (Calavaza, 9/21/84 : 15-16) Coupled with the reduction of silt-filled Black Rock Dam to only one irrigation per year, this technological dependency eventually forced many Zunis out of farming. (Eustace, 9/24/84 : 70-71)

The third impact was the severe degradation of Zuni range land. This was caused by overgrazing, which the depositions attribute to the combination of a boundary fence and a delayed reduction in stock. (Eustace, 9/24/84 : 70; Lewis, 9/22/84 : 100-102) One evidence of the reduction of range quality is that good range grasses, such as Western Wheat, Gramma, Chamisa and Winterfed, have been replaced by pinkweed, snakeweed and other poisonous vegetation, which has been responsible for the loss of up to fifty sheep a year from some herds. (Eustace, 9/24/84 : 11, 69; Lewis, 9/22/84 : 34-35)

The judgment of Zuni elders is that, despite some useful and effective government program, such as the Emergency Conservation Work (ECW) of the late 1930's, reservation range and farm lands are in far worse shape today than they remember them being in the first three decades of this century.

SUMMARY: THE LOSS OF OPTIONS

The underlying theme of these depositions is the loss of options. Zunis formerly derived their subsistence from many different sources, effectively integrating food production with resource conservation. Upsetting the traditional balance between exploitation and conservation were new water and range management policies and practices which degraded formerly productive farm and range land and contributed to technological dependency in a cash economy. Fencing precluded the use of leased land off the reservation for stock grazing. Silted dams inhibited effective irrigation and made control of runoff more difficult, eventually damaging the lands they were supposed to water. Changed watercourses caused by rechanneling of ineffectively controlled runoff, severe erosion, and new siltation have ruined much Zuni farmland. Dependence upon costly mechanization has reduced rather than increased productivity and driven some Zunis out of farming and some land out of production.

In brief, the innovations introduced by the Bureau of Indian Affairs in the first decades of this century as a means of increasing Zuni agricultural productivity have degraded the very range and farm lands they were supposed to improve. As a result, the present generation has inherited the costly burden of reclaiming the natural resources on which the future of the Zuni people depends.

STATEMENT OF EDWARD BEYUKA
TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

I am currently serving as a member of the Zuni Tribal Council. I wish to speak in support of the Zuni Settlement Act of 1990 and also in support of the amendment which the Tribe is requesting regarding just compensation under the fifth amendment for the taking of tribal aboriginal territory.

The Settlement Act will end a long struggle which the Tribe has had regarding damage to the Reservation land. It is time to end the long legal proceedings and go to work to repair the land.

The amendment which the Tribe is requesting would enable us to recover just compensation under the fifth amendment to the United States Constitution for the taking of our aboriginal land. Through careful research, our experts have found that we were deprived of our opportunity to obtain recognized title to our aboriginal homeland by the fraudulent dealings of federal officials who were responsible for the protection of our interests.

There is a matter of basic fairness which needs attention here. When our land first became a part of the United States, the Zunis were friendly to the Army. While many other tribes in the area were hostile, the harvest from our once-rich farmland was used to feed the soldiers at Ft. Wingate and other forts. We fed General Kearney and his troops. We fed General Sherman and his troops. We have always been loyal to the United States. In return, title to our land was taken from us by the misdeeds of federal officers and by other acts and omissions of the United States. That was not fair.

When our country needed help during World War II, the Zunis answered the call. I volunteered and was assigned to the U.S. Army Infantry. I was captured in the Philippines and was one of the few who survived what is known as the Bataan Death March. After the march, I suffered in Japanese prisons for 34 months waiting for the end of the war. Other Zunis served with equal dedication and sacrifice. Governor Robert Lewis was a crewmember on a Navy submarine in the South Pacific throughout the war. In return, dishonest federal officials tricked our leaders into signing a document which said that we had no claim to assert before the Indian Claims Commission. We were left without a remedy for the taking of our ancient homeland. That was not fair.

When our attorneys told Congress about the way we had been deprived of our right to file a claim before the Indian Claims Commission, a special jurisdictional act was passed which allowed us to bring an action in the United States Claims Court. At that time, Congress was fair with us. Last year, the Judge told our attorneys that we could not receive just compensation under the fifth amendment because Congress had not acted on our claim of title to our homeland back in the late 1800's. Then, our attorneys and expert witnesses did more research to find out why Congress had not acted. That is when our attorneys became aware of the records which show that title to our lands was wrongfully taken from us by dishonest federal officials. Now that we know what the problem was, Congress has one last opportunity to be fair with the loyal Zuni Tribe. Please enact the amendment which will recognize the Zunis' title to their homeland so that they can receive just compensation under the fifth amendment. Thank you.

STATEMENT OF HARRY CHIMONI
FORMER TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
MAY 7, 1990

Mr. Chairman:

My name is Harry Chimoni. I am a member of the Zuni Tribe and a resident of the Pueblo of Zuni. I served as a Councilman under Governors Panteah and Simplicio. I am still very active in our political affairs in the Pueblo. The lawsuits in Dockets 327-81L and 224-84L before the United States Claims Court have been closely followed by the people here in the Pueblo. We are well-informed regarding what these cases represent.

We understand that the Tribe sued the United States for damages to our Trust Lands, caused by the acts and omissions of officials and employees of the United States, as well as policies which have resulted in the loss of valuable farm lands, water and other natural resources. In my lifetime, I have seen the farmlands slowly eaten away by ongoing erosion. Flooding is an annual event as the snowpack melts, and spring rains wash tons of soil from the watersheds.

I think the whole community is anxious to get about the business of erosion control, but we do not have the means to do it. The Bureau of Indian Affairs has not had the focus or the funds to deal with the problem in the past. There can be no doubt that corrective measures are needed immediately to prevent continued erosion problems. The settlement allows the process to begin. The bill says that we will begin at once to correct the problems instead of sitting around while the Court takes lots of time deciding whose fault it is. It really doesn't matter, because we all know that what is happening is not right and must be changed.

The bill provides for a resource development plan which is long overdue. We need programs in the Pueblo which will train Zuni people to fill professional positions as well as to do the pick-and-shovel work in the watersheds. Good planning will coordinate both the activities of the Tribe and the B.I.A. to insure that there is no overlap, waste of money, or problem areas ignored.

The people of Zuni like the idea of a trust fund which will not all be spent in a couple of years. The interest from the trust fund should be sufficient to maintain the Reservation Rehabilitation Program. During the 1930's the Soil

Conservation Service built a number of check dams on the Reservation, but when everyone went to war, these small check dams needed repair. Since no one was around to maintain the check dams, they soon washed away and were of no use. A trust fund will provide money forever to make sure that the check dams can be repaired every year.

The Zuni people have been great farmers in the past, but the lack of power, the down cutting of our streams, and the carving up of traditional farm lands by arroyos make it very difficult to practice farming. Most of us have to seek employment or wage labor and can only afford to farm on the side. Our range land is not in good shape, and our livestock have been reduced. If we pay attention to good range practices, I think we can reseed and restore much of the range to what it used to be, and allow us to increase our herds.

We believe that many of the Zuni traditional farming methods have great value as we are about to enter into the 21st Century. Perhaps modern range managers can learn from our Zuni Elders. Likewise, we are open to anything which can improve our Reservation. Over the years, the settlement money, invested now, will repay itself in increased productivity on the Reservation and an improved lifestyle which we can enjoy. It is depressing to see our lands eroding away. The vision of restoring our lands makes me very happy. For these reasons, I support the Zuni Settlement Act of 1990.

STATEMENT OF CHARLES HUSTIDO
FORMER TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

May 7, 1990

Mr. Chairman: I served as a member of the Zuni Tribal Council under Governor Chauncey Simplicio and the late Governor Quincy Panteah from 1982 through 1986. I wish to offer my support for the proposed settlement of the lawsuit known as Zuni II, but offer some suggestions which I think are vital to the eventual success of the intent of the bill. Before the bill is sent to the Senate Floor for a vote, the Committee should, in my opinion, make it clear that this bill only settles the Zuni II lawsuit and that it does not settle the claim for taking of Zuni aboriginal land.

During my tenure in office I was very concerned with the ongoing erosion of the Zuni Indian Reservation and the apparent inability of the Bureau of Indian Affairs to appropriately deal with it. The lawsuit filed by the Tribe prior to my being elected to office seeks damages against the United States for acts and omissions of the United States which are a direct cause of today's problem of erosion. The payment of money to the Tribe cannot discharge the B.I.A. or other agencies of the United States of its duty to help protect our lands in the future.

I have no problem with the general thrust of the present legislation which is to settle the lawsuit and use the proceeds going to the Zuni Tribe to help repair the damage to our lands. I would like to make several recommendations which I think should be included in the overall planning for trust land rehabilitation which will insure that future efforts will be undertaken as a partnership between the Zuni Tribe and the United States:

1. The Bureau of Indian Affairs cannot continue to be indifferent to good conservation practices and continue to neglect obvious problems. All too often, the Bureau has been guilty of no planning or poor planning and is presently ill-equipped to have any impact on restoring trust lands to their previous condition.

2. The Bureau of Indian Affairs must be funded by Congress with monies specifically allocated to land restoration on the Zuni Reservation. It appears to me that there should be a viable partnership between the Bureau and the Tribe wherein the Bureau will at least match the money which the Tribe will contribute for future land restoration.

3. Expenses to cover technical data regarding soil surveys, stream flow monitoring and computerized resource management should be born by the

Bureau of Indian Affairs. Salaries of Zuni technicians and laborers could be paid by the Tribe.

4. The Zuni Trust Fund money should be spent for salaries to employ Zuni people who are involved directly in fencing, reseeding, reforestation and watershed work on the Reservation.

5. Fencing of grazing areas is necessary so that newly reseeded areas can be protected and livestock properly controlled. The B.I.A. should provide the fencing materials, and the Tribe can provide the labor.

6. The Bureau and the Tribe should involve themselves in extensive planning before money is spent, so that all efforts will be well-coordinated and include programs for youth, college bound students, unemployed Zunis and the elderly.

7. The Indian Health Service and the Environmental Protection Agency should take immediate steps to provide good drinking water for the Zuni Reservation, since the present drinking water supply is shamefully polluted.

I have been very active in community affairs over the past four years. I have spoken with the people in the community, and they are of the opinion that this program of land and water rehabilitation must be done right. In order for it to succeed, it must involve the people of the local areas so that they feel a part of the outcome. The program must address creative ways to provide water and power to former farmlands; eradicate gophers and other rodents living in earth dams, ditches and berms; control grasshopper infestations; and deal effectively with siltation problems.

Each area of the Reservation is unique and will require extensive planning to insure that the proper conservation techniques are utilized. The Zuni people will cooperate in providing good information as well as their time and labor. The Bureau of Indian Affairs should help by giving of their means, material and technical expertise. Only as a partnership will the Zuni Tribe and the Bureau of Indian Affairs be able to effectively resolve the erosion problems of our Reservation. I support the legislation because it is my belief and understanding that the Bureau will not continue to neglect our lands, but will now work with us hand in hand as true partners.

STATEMENT OF EDISON LASELUTE
FORMER GOVERNOR
OF THE PUEBLO OF ZUNI
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
MAY 7, 1990

Mr. Chairman:

My name is Edison Laselute. I am a former Governor of the Zuni Pueblo Indian Tribe from the State of New Mexico. I am most appreciative for the opportunity to submit a statement in support of the proposed settlement of the lawsuit between the Zuni Indian Tribe and the United States, presently pending before the United States Claims Court. Prior to this I was involved in initial legislation and the beginning of the research for litigation on the cases during my term of office from 1975-78.

I was employed at the Zuni Indian Agency from 1954-1989 by the Bureau of Indian Affairs as an Engineering Technician for the Branch of Land Operations. My main line of work was to start and implement soil conservation programs on the Zuni Reservation. We started in Coal Mine Canyon. I am sorry to say we always ran out of money and were not able to follow through on any of our plans, because there just never seemed to be a priority in the BIA to work on our erosion problems. We built rock and brush check-dams, but we never had enough manpower or funds to maintain them, so in a few years they washed out and we were right back where we started.

The frustration of seeing our work washed down the stream was a constant worry to me and other employees. This condition has not always existed. I helped find our tribal elders and religious leaders who had vast knowledge of things past. They were then asked by our attorneys to give depositions for the lawsuit so that everyone would know what it was like many years ago. The government attorneys asked questions of our tribal elders and our experts to learn from them. The elders told them of better times when our valleys were not cut up with large gullies and our mountains were covered with timber. Bad things began to happen after the coming of the railroad.

The government made us change our old way of farming and built large dams for irrigation purposes. These dams have never done job and have caused more trouble than they were worth. We can't even get water down 10% of the canals. Our farm production has fallen off to almost nothing because the water table is too low and we cannot get the water up to the fields from the bottoms of the washes. I know that things are different now than they used to be, and the changes are for the worst. The government activities have created conditions which will be difficult to repair. So far the B.I.A. efforts to help are too little and are ineffective because they don't remain consistent.

We Zuni people are concerned that our land will never be fixed-up the way it once was. The $25,000,000 settlement of the lawsuit will give us a Pueblo a means of helping ourselves. We should work together with the B.I.A. to help restore our lands. If the Pueblo of Zuni is involved to give direction and manpower, I can't see why we wouldn't be able to develop a consistent program that wouldn't wash away in a few years because the B.I.A. changed funding priorities. The Zuni people and our land will gain from this legislation, and the B.I.A. will be have the continued support of the Zuni people in fighting erosion. I want to congratulate and thank all those who supported our endeavor in this most important historical event.

Thank You.

STATEMENT OF PESANCIO LASILOO
LT. GOVERNOR
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

I am currently serving as the Lieutenant Governor of the Pueblo of Zuni. I endorse the Zuni Settlement Act of 1990. I particularly want to emphasize the importance of enacting the amendment which corrects the mistake made in the land description of Zuni Heaven in Public Law 98-408 which was enacted August 28, 1984.

That enactment made it possible for the federal government to exchange land in such a way that ownership of the area in Northeastern Arizona known as Zuni Heaven could be acquired by the United States in trust for the Zuni Tribe. Unfortunately, the description contained in Public Law 98-408 omitted two sections of land owned by Leonard Isaacson which are necessary to complete the acquisition of Zuni Heaven. We have discussed this matter with various federal agencies involved and everyone agrees that a mistake was made. We would appreciate very much your correcting that mistake.

It is very important that the lands comprising Zuni Heaven be held in trust for the Tribe. From time to time, someone threatens our ability to use this sacred land in our traditional religious ceremonies. During the past several years, one property owner has attempted to block our use of the traditional pilgrimage trail where it crosses his land. We have been using that trail since time immemorial. We finally won the case in the trial court and the judge protected us with temporary restraining orders while the case was in progress. The case was long and very expensive. The Justice Department did a good job representing our interests in that case. However, it is now on appeal and the final result will not be known for several years.

The only way to reduce the risk that others may interfere in the future with our religious ceremonies is to have the federal government hold the land in trust for the Tribe. The two sections of land affected by the proposed Zuni Heaven amendment would add significantly to the long-term safety of our religion and its expression. Zuni Heaven is very important to us and we would be deeply grateful for your help. Thank you.

STATEMENT OF RITA E. LORENZO
TRIBAL COUNCILWOMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

I am currently serving as a member of the Zuni Tribal Council and have served for two consecutive terms. I support S. 2203 for several reasons. First, there is an urgent need to stop the erosion which continues to wash our best land downstream. A fair settlement will allow the repair work to begin much sooner than pursuing litigation to the bitter end. We have the personnel, the intelligence and the will to improve our land. We need the financial ability to train and pay our people and to hire experts to assist us in areas where we do not have expertise. Passage of S. 2203 will give us the ability to do the job.

Second, the bill provides for using a portion of the settlement funds to clear up the Zuni Tribe's obligations. One very important obligation is to complete the purchase of the Ellsworth ranch which adjoins the reservation. We promised Mr. Ellsworth that we would buy his ranch as soon as we had the money. This settlement would enable us to acquire that land and thereby minimize the possibility of problems with our neighbors.

Third, the bill also provides for putting the major portion of the settlement money into a trust. This would help create a legacy for the Zuni people forever. This is much better than spending it all in one generation. Also, the trust would provide many good jobs for Zuni people.

I also support the amendment which the Tribe is requesting on the subject of just compensation under the fifth amendment. It seems obvious to me that the Tribe has been deprived of its chance to secure title to its homeland by the misconduct of those federal officials who had the responsibility to look out for our interests. We realize that it would be impossible to restore the land to us now, but it seems only fair to give us the opportunity to receive just compensation. When Congress found that federal officials had tricked us out of our right to bring a claim to the Indian Claims Commission, a special jurisdictional act was passed allowing us to go the the U.S. Claims Court. Now you have learned of how other federal officials tried to steal our land and, in the process, deprived us of our opportunity to obtain the same recognized title which was given nearly all other Pueblos. We are depending upon your sense of fairness. We ask you to place us on the same footing as other, similar tribes.

Lastly, I support the Zuni Tribe's proposed amendment to include Sections 13 and 23 to the description of Zuni Heaven. We are asking to amend Public Law 98-408 to correct a drafting mistake which was not discovered until a substantial period of time after enactment. It is a very important thing that the intention of the original Public Law 98-408 be carried out by this amendment. We must be able to protect our religious shrines and ceremonies from outside interference. Enactment of the amendment would be a great help in this regard. Thank you.

STATEMENT OF ANGUS MAHOOTY
TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

I am in favor of S. 2203. I was elected Tribal Councilman over three years ago. I ran for office because I wanted to get things done. I have worked in the building trade most of my life and I like to see things get built the right way and finished as soon as possible. I think that lawsuits last too long and we have been working on these for over nine years. The legal system doesn't move fast enough to suit me. Therefore, I think we should settle this case and get on with life if we can get a good settlement. I believe that S.2203 is a fair settlement even though we would only get 50¢ on the dollar for what I think our actual damages are. But if you want to settle a case both sides have to give a little. We have to discount for the fact that the court may not see it our way and it may take a lot more time before the case is finally over, especially if the case is appealed. Once the money is in our bank account we Zunis can get down to business and start fixing-up our land. Besides, the folks in the Bureau of Indian Affairs say that they will work with us like we are partners if we want them to.

I am also in favor of the amendment which the Tribe is requesting on the subject of just compensation for the taking of our tribal homeland by the United States. I have personally attended the hearings on Docket No. 161-79L in the U.S. Claims Court and I believe that our only hope of obtaining a just result is for Congress to enact the proposed amendment to S. 2203. The judge said that he didn't feel that he should find recognized title if the Congress had not done so. In this hearing, the reasons why Congress did not act on our claim to title to our aboriginal homeland are explained. The main reason is that the very persons who had the responsibility to look out for our property interests were busy doing illegal and dishonest acts cheated us out of our chance to have our claim recognized. That's just plain not fair. We had to rely on the officials to be honest, otherwise we didn't have a chance to get what really belonged to us.

We need your help to put in some language that will straighten out the Zuni Heaven land. When you passed the Zuni Heaven Act a couple of sections were left out. Now would be a good time to get the description right. Thank your for your help in trying to make sure we that the laws you pass are fair.

STATEMENT OF BARTON MARTZA
HEAD COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

I am currently serving as the Head Councilman of the Zuni Tribal Council. I speak in support of the Zuni Settlement Act of 1990. While the legal process grinds slowly on, our farmland continues to wash downstream toward the Gulf of California. This situation calls for swift Congressional action to stop the continuing damage and start the process of repair. The long path through the courts may determine fault, but it will not stop the erosion this year. It is for our children and their children that we ask you to help us stop this continuing loss of our best land.

Today, I especially want to speak in favor of the amendment which the Tribe is requesting on the subject of just compensation for the taking of our aboriginal land. The Judge ruled that we could not recover just compensation because Congress had never acted to confirm our title to our homeland. Judge Napier is a former Congressman and he felt that a judge should not invade Congressional prerogatives and find recognized title if Congress had not acted. He said in his opinion that he considered the result to be unfortunate, especially in light of Judge Yanello's finding of neglect by the Surveyor General.

When Judge Napier made his ruling, we decided that more research should be done to find out exactly why Congress had not acted on the Zunis' land title while they did act to confirm title for nearly all other Pueblos. Our attorneys and expert witnesses found evidence of the ugly scheme of land fraud which deprived the Zunis of their opportunity to obtain recognized title. Some of the most damning and detailed evidence is found in your own Congressional records. In the Executive Documents of the Senate, 48th Congress, Second Session, Executive Document No. 106, pages 1 through 404, there are reports by federal investigators and affidavits in support of the reports, all of which show that we were victimized by greedy and dishonest federal officials who were responsible to protect our interest in our homeland.

This scandalous scenario has been residing in your records for one-hundred six years. Now that we have diagnosed the illness, you have the opportunity to apply the cure. Please understand that we would rather have our homeland, but we know that such a thing is impossible under the circumstances. Just compensation would enable us to engage in economic development and to set up a legacy for Zuni people in perpetuity which could be used for scholarships, training programs and jobs. We are not a lazy people. We are intelligent and vigorous, but we need opportunity! Your enactment of the proposed amendment would make our dream a reality. Thank you.

STATEMENT OF CHAUNCY SIMPLICIO
FORMER GOVERNOR
OF THE PUEBLO OF ZUNI
SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE
MAY 7, 1990

Mr. Chairman:

As a former Governor of the Zuni Tribe it is a pleasure for me to submit a statement in support of the proposed settlement of the reservation damage lawsuit between the Zuni Indian Tribe and the United States presently pending before the U.S. Claims Court. The lawsuit was filed in 1981, about two years before I became Governor. I became very involved in the case as we prepared for litigation. The Tribe hired the best and most able experts it could find to make sure that we could accurately determine what the facts were that led up to the present-day erosion problems on the reservation.

We had a long series of depositions of our Tribal elders to preserve their knowledge of past dates and events that shed light on the erosion problems, as well as the taking of our water, salt, timber, coal and other reservation assets without payment of any kind. Our Tribal elders and our experts were examined by government attorneys to make sure that their statements were true and accurate.

The clear evidence shows that the Zuni reservation was in beautiful condition in 1846 when the United States began to exercise sovereignty and control over our area. Our area was pretty much left alone until the coming of the railroad in the early 1880's, then many changes began to occur. The government allowed the clear-cutting of our watersheds and subsequent overgrazing by non-Indian livestock. Changes in the streams soon began as the increased flow of water down bare slopes dug channels and carried sediment into the once clear streams and flat valleys.

The government made matters worse by insisting that we change our old traditional farming techniques which spread water and planted with stick planters which did not disturb the surface and made use of rain water by diverting out of the small side-canyons using small brush and rock structures. The B.I.A. changed all of our time-honored farming practices by building large dams and irrigation canals which all failed, became silted and unoperational. We have lost well over ten thousand acres of our best farm land and valley bottoms because of the imposed changes by the Bureau of Indian Affairs.

The government claims that it wasn't responsible, because the erosion would have occurred anyway. They say this just to protect the government, or they really don't understand; because they don't live here and see what really happens. I know that things are different now than they used to be, and the changes are for the worse. The government activities have created conditions which will be difficult to repair.

I fear that much of our land will never be reclaimed. Our attorneys tell us that $25,000,000 is a fair settlement. I know that trying to repair the land will take much more money than that, but I also understand that the United States will continue to spend money to help remedy the situation after the settlement is made. If that is the case, then it will be fair to settle the case for $25,000,000 to give the Zunis a chance to participate in a meaningful way to improve the Reservation.

It is smarter to work together to solve the problems of reservation management than to fight one another in court and never get around to fixing the problems. I look forward to the day when we can work together to make our Reservation the kind of place it once was. I am happy to support this legislation.

STATEMENT OF WILLIAM TSIKEWA, SR.
TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

My name is William Tsikewa, Sr. It is an honor for me to submit a statement to you in support of S.2203, known as Zuni Claims Settlement Act of 1990. I have reviewed Section 2 which contains the Congressional Findings with respect to important facts leading up to this settlement. I know that these seven findings are accurate and true. I have also studied the Resource Development Plan which is contained in Section 3. I am particularly interested in the development of a methodology which would result in the sustained development of our renewable resources.

I have been struggling with the Indian Health Service and the Bureau of Indian Affairs to obtain decent drinking water for the Pueblo of Zuni. Unfortunately, our water is of very poor quality and would not meet either state or federal standards. Both water and sewer lines were laid in the same trench, and there is infiltration into our water system from the sewer. The result is that many of our people have become ill, and we receive many complaints daily about the smell and taste of water. The doctors at the Indian Health Service Hospital always take home distilled water from the hospital to drink in their homes. The rest of our people don't have that luxury, and we get sick.

I think it is high time that something was done about this situation involving our water. We are helpless without our own funds and must depend upon the Federal Government to remedy this situation. For this reason, I am most anxious to see resource development take place on our reservation and have the Tribe have a meaningful part in that planning and development. I would like to see this lawsuit settled so that we can get on with the cleanup of our reservation water and also put an end to the erosion problems that we face. Every spring we are threatened with floods, because our watersheds have been clearcut and overgrazed. We feel that this Settlement Act will give us a constant source of income to apply to that project. Thank You.

STATEMENT OF VIRGIL WYACO, SR.
TRIBAL COUNCILMAN
OF THE PUEBLO OF ZUNI

SELECT COMMITTEE ON INDIAN AFFAIRS
UNITED STATES SENATE

My name is Virgil Wyaco, Sr. I am a member of the Zuni Tribal Council and have served in this capacity for the last three years. I have been active in our community affairs all of my life and have been involved in business. My specific job as a Tribal Council Member is to assist with Tribal finances. The Zuni Tribe does not have any royalties from natural resources, such as oil, gas or mining. At one time our area had beautiful forests, but they are all gone. We have learned to be very industrious in our farming, and now in later years, we have been forced to look to wage labor and private business to support ourselves. We are an industrious people and have been able to have personal financial success while our Tribe remains very poor.

The Zuni Tribe has taxed itself and has done everything within its power to meet the demands of Tribal members to have a good government. All of the income which the Tribe receives is spent in providing services to our people. That income is so meager that we have to rely upon federal grants and other programs to provide adequate service, such as law enforcement, fire protection and utilities.

We are a very wealthy Tribe with respect to human resources, and we pride ourselves in our industry and willingness to work. We have no desire as a Tribe to receive a per capita payment when our Claims Cases are finally settled and paid. We have seen what has happened on other reservations, and we do not desire to have our people rely upon unearned income. As a Tribal Council, we strongly endorse a program which would require that all judgment funds be kept in trust as a permanent endowment for the Zuni people. The interest from such trust funds should be spent for the benefit of all Tribal members in efforts to acquire watershed lands, religious shrines, public works projects, educational scholarships and care of the elderly.

I support S.2203, because I think the settlement is fair, and it will provide a permanent trust which will ensure the improvement and beautification of our reservation lands. I also support the Tribal amendments to acquire Sections 13 and 23 in the Zuni Heaven area, and to recognize title to our aboriginal lands for the sole purpose of allowing us to receive interest on the judgment from the date of taking. Thank You

United States Department of the Interior
BUREAU OF INDIAN AFFAIRS
ALBUQUERQUE AREA OFFICE
P.O. BOX 26567
ALBUQUERQUE, NEW MEXICO 87125-6567

IN REPLY REFER TO:
300 - Branch of Natural Resources
Services

MAY 03 1990

Memorandum

To: Assistant Secretary - Indian Affairs

From: Area Director

Subject: Zuni Settlement Claims Act of 1990

Secretary Brown, the attached information is for your use in finalizing the Bureau's position with regard to the hearings which will be conducted on May 7, 1990, on the Zuni Settlement Claims Act.

I realize that this will be a very difficult decision to make without the approval of the Justice Department, however, this settlement is not a quick fix, but is a long term solution to both economic and social problems presently facing the Zuni people. This settlement will give the Zuni people an opportunity to further develop both hope and pride in their land.

Your favorable consideration will be greatly appreciated by the Zuni Tribe, as well as the field staff who have worked toward the support of this settlement.

Area Director

Attachments

Kent Conrad

STATEMENT OF SENATOR KENT CONRAD

SENATE SELECT COMMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, I would like to take this opportunity to thank you for holding this hearing today to discuss my bill, S.1934, which requires the Department of Housing and Urban Development to reimburse towns located on Indian reservations for 100 percent of the costs they incur in providing services to Indian housing.

Today this committee will hear testimony about the pressing needs of rural towns. We will hear testimony that demonstrates the failure by the Department of Housing & Urban Development, as well as Congress, to shoulder its fair share of the burden of paying for services that these towns provide to public housing.

I am particularly pleased that the Committee will hear from several North Dakota witnesses -- Jean Hall, Executive Director of the Fort Berthold Housing Authority, Mayor Wade Williamson from the City of Parshall, and Clare Aubol, the newly-elected Mayor of the City of New Town. These witnesses have dealt first hand with the problems of providing services with a minimum of funding.

Mr. Chairman, this is a matter of simple fairness. The Fort Berthold Housing Authority owns about 20 percent of the total properties in Parshall, and 15 percent of the properties in New Town. Because these properties are taken out of the local tax base when acquired by the Housing Authority, these communities are having a great deal of difficulty funding city services.

HUD is supposed to compensate the towns for their lost tax revenues, but figures its liability on a formula that is antiquated and completely unrealistic. And as a result, HUD does not pay the towns a penny.

Clearly, this situation must be addressed. And the obligation lies squarely with the Department of Housing and Urban Development. People who live in HUD rental units need basic city services. And the towns that provide those services are entitled to receive fair compensation from the Federal government. The Federal government must not shirk its responsibility to these rural communities that are already struggling to survive.

Again, Mr. Chairman, I wish to express to you my sincere appreciation for holding this hearing today.

STATEMENT OF MICHAEL B. JANIS
GENERAL DEPUTY ASSISTANT SECRETARY
FOR PUBIC AND INDIAN HOUSING
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Senator Conrad and Members of the Committee, I am pleased to have the opportunity to appear before you today to discuss the proposed legislation concerning the payment of fees for certain services provided to Indian housing assisted under the United States Housing Act of 1937.

The U.S. Department of Housing and Urban Development has serious concerns about the provisions of S. 1934 and its potential impact on the Indian housing program.

First, the concept of Payment in Lieu of Taxes, known as PILOT, has been a long-standing arrangement with local communities and public and Indian housing authorities which provides for the waiver of property taxes in exchange for the federal government's financing of much needed housing for low-income people.

It is the Department's view that the development of low-income housing in a community is an asset to that community's citizenry, and that the community's contribution to its success is a waiver of property taxes. We believe in maintaining the original intent of Congress in the creation of the public and Indian housing programs which was to provide for the sharing of costs by local government. The reality is that over the years the federal government has borne an increasingly larger share of the development and management of public and Indian housing. PILOT remains as the major area where local government contributes to this valuable housing resource. Any change to this fundamental concept could have a far-reaching financial impact not only on Indian housing, but on the Nation's 1.4 million units of public housing.

The Department's second concern is that we have no ability to determine the financial and operational impact of S. 1934. There are many communities wholly located on Indian reservations which would be affected. Without extensive research, the number may be difficult, if not impossible, to ascertain in advance. Further complicating an estimation of the impact is the fact that, whereas PILOT is formula driven using ten percent of shelter rents, the bill would require housing authorities to estimate property taxes on an annual basis for each of its units.

In closing, let me assure you that the Department understands the concerns of the Committee and we are sympathetic to the financial problems of small towns. However, we would like to emphasize that any change to the concept of PILOT could undermine that basic relationship between the federal government and local communities upon which the public and Indian housing program has been built.

TESTIMONY OF JEAN M. HALL
BEFORE THE
SENATE SELECT COMMITTEE ON INDIAN AFFAIRS

Mr. Chairman, and members of the Subcommittee, thank you for the opportunity to provide this testimony. My name is Jean Hall and I am the Executive Director of the Fort Berthold Housing Authority located on the Fort Berthold Reservation in North Dakota. On behalf of the Three Affiliated Tribes, I wish to extend my appreciation to the Senate Select Committee on Indian Affairs for this opportunity to provide testimony in support of Senate Bill 1934. Jointly, the Tribes, the incorporated cities of New Town and Parshall, and the Fort Berthold Housing Authority have long struggled to resolve the problem of the shortfall in tax dollars to these two communities. Most of the shortfall is attributed to the federally tax exempt status of the properties managed by the Fort Berthold Housing Authority which are located within the cities. Presently the Fort Berthold Housing Authority manages 80 rental and mutual help properties in Parshall and 111 in New Town. This comprises 20% of the taxable residential base in Parshall and 30% in New Town. As the Housing Autority continues to acquire properties, the municipal tax base is further eroded.

The Tribe is proposing the following language to be included in the amendment:

1) That a permanent and separate federal appropriation be

established for said payments which will not impact other Indian Housing allocations. The Fort Berthold Housing Authority is currently underfunded at 93% operating subsidy for 1990 due to federal cutbacks in the housing program. New construction has been zeroed out despite the continuing need for new housing in Indian country. Other agencies such as the Indian Health Service are even now applying for budgetary increases to better meet the $6.33 Million unmet sanitation needs on the Fort Berthold Indian Reservation. In addition, the Bureau of Indian Affairs is also unable to respect it's obligations within the federal tri-agency agreement, an agreement that provides for Bureau of Indian Affairs assistance in the construction and maintenance of road systems. That line item has been zeroed out of the Bureau of Indian Affairs budget for many years.

2) If in the future, the local governing unit responsible for providing such services reverts to the Tribes, that the Tribe shall be able to receive said payments in the same manner.

3) That the formula to determine the payments be developed with the approval of the Three Affiliated Tribes and that the formula be reviewed at least bi-annually.

4) That the mutual self help units be included based on the fact that 95+% of these families are within low and very low income ranges.

In conclusion, the situation we are facing is reaching a critical level in terms of its economic and social impact on the entire community which encompasses both Indian and non-Indian. As you are aware, the economy of North Dakota and particularly of the smaller towns in North Dakota is desperate. Neither the Tribal Business Council nor the Fort Berthold Housing Authority, through the Department of Housing and Urban Development, has the funds for payments for services.

You should also be aware that community relations over the years between both the residents of Fort berthold and the non-Indian community has been strained at times. We have made strides within the last few years to improve understanding and cooperation between both groups. It is with this spirit in mind, on behalf of the Tribe, the communities, their residents, I urge your support of S. 1934.

Testimony of Clare Aubol, Mayor of the
City of New Town, North Dakota before the Senate Committee
on Indian Affairs of the 101st Congress, made on May 7,1990
at Washington, D.C. regarding S.1934

Mr. Chairman Inouye, Senator Burdick, Senator Conrad, other members of the Committee, my name is Clare Howard Aubol. I have just recently been elected Mayor of the City of New Town, an incorporated North Dakota city with a population of less than 2000 residents.

The City of New Town is a unit of general local government located within the exterior boundaries of the Fort Berthold Indian Reservation. The City provides services and maintains facilities for the benefit of persons residing within the City, including those residing in housing provided by the Fort Berthold Housing Authority both within and adjacent to the City.

At the outset, Mr. Chairman, let me say that we recall with warmth and fondness your visit to our community last year and we look forward to a return visit as your schedule permits.

Let me say also that we greatly appreciate the work of Senator Conrad and Senator Burdick in bringing to this forum the issue under consideration today, and we thank the Committee for inviting our testimony. The issue of payment for services provided by the City is of great importance to our community and we are hopeful of your favorable consideration of Senate Bill S.1934.

The housing provided by the Fort Berthold Authority brings to many in our community quality units of living that would not otherwise be available and brings to the children of many families a home environment that is both stable and healthy. I recall talking with school administrators in the 1960's, when the housing program first started, about the improved school performance of children whose families had received good, new housing through the Authority's program.

In 1967 the City of New Town entered into a "Contract for Services" with the Fort Berthold Housing Authority. (Exhibit A) The Contract required that the City provide certain services to eighteen low rental housing units and, in return, the Authority would pay to the City Eighty-Five ($85.00) Dollars per unit per year for such services. That Contract continued in effect, and payments were made pursuant to that Contract, until 1979.

In 1979 the City entered into a "Cooperation Agreement" with the Housing Authority, which Agreement superseded the 1967 Contract. (Exhibit B) In addition to the eighteen units previously covered by the 1967 Contract, the 1979 Agreement envisioned the development of another 82 units of housing within the jurisdiction of the City, and the Agreement called for the City to provide services to the 100 housing units.

The City has provided the called for services but has received no payment for those services since 1979, except that for the past six years the Fire Department has received payment under a separate understanding for fire protection.

The reason for non-payment, we understand, is that, while the 1967 Contract provided for a flat payment of $85.00 per unit per year, the 1979 Agreement invoked the concept of a formula whereby payment would be based on 10% of "shelter rents" collected by the Authority.

Problems with that concept are, first, that "shelter rent" is defined in the 1979 Agreement as payments collected rather than as payments charged, and, second,that "shelter rent" is further defined as payments collected after subtracting utility costs. Once the utility costs are subtracted from the payments there is a negative balance, leaving nothing on which to base a 10% payment.

Although payment does not seem possible under the formula of the 1978 Agreement, the residents continue to need the services and the facilities of the City. And, difficult as it is, the City has continued to maintain facilities and provide services. But major changes, within the last three years, to the City's tax base puts the continued delivery of services in serious jeopardy.

For 1990 the City expects to receive $78,000 in general tax revenue by levying 139 mills on a 1989 taxable valuation of $559,000. In 1986 the valuation was at $612,000; in 1987 it dropped to $581,000; in 1988 it was at $562,000; and, finally, for 1989 at $559.000. (Exhibits C,D,E)

Of the $78,000 expected to be received in 1990, $29,000 will go to pay the City's share of a 1984 street improvement project; another $21,000 represents the general levy, most of which will go to support a police unit of two men, down from three in 1987. Other services provided and the mill levys to support them may be found in the exhibits attached.

In 1990 more than 25% of the property in the City of New Town is exempt from taxation. In 1986 the City had taxable property fully valued at $12.2 million. In 1987 $187,000 was removed from the tax roll; another $555,000 was removed in 1988; and still another $479,000 was removed in 1989. Today the full taxable value of property in the City stands at $11.0 million, down $1.2 million from 1986.

Nearly all the $1.2 million decrease can be accounted for by property purchased by the Housing Authority and removed from the tax roll under the home-buyers program.

Today the City provides services and maintains facilities for residents housed in 73 low-rent units and in 38 home-buyer units, title to which rests with the Housing Authority. But the need for additional housing continues and, to the extent possible, we look forward to providing what services we can to the units planned for construction in the near future.

In that regard, Mr. Chairman, let me note briefly that in 1987 the Housing Authority approached the City about the possibility of getting City water and sewer service to the new units scheduled for construction. The City's 50,000 gallon water storage tank was already pressed beyond its capacity. We simply could not add more housing units without increased water storage.

To accommodate the request, however, the City made application for funding of a new 500,000 gallon water tank. Funding was available at a 75/25 match through the Municipal, Rural, and Industrial (M,R &I) water program of the Garrison Reformulation Act. But the wait promised to be a long wait.

Not wanting to be delayed, the City joined with, and at the invitation of, the Fort Berthold Housing Authority and the Three Affiliated Tribes of the Fort Berthold Indian Reservation in securing almost immediate tank funding with offset money from the Housing Authority through the Indian Health Service, at a cost to the City nearly equal to that which would eventually have been available through M,R &I.

The tank project was completed this Spring and about six weeks ago Housing Director Jean Hall joined City officials in turning the valve to the new tank. Today water from that tank flows to homes within the City and to those homes of the Housing Authority adjacent to the City. It was a joint effort that will serve us well for many years to come.

Regarding joint efforts, Mr. Chairman, we appreciate the concern of the Housing Authority, of the Three Affiliated Tribes, and of your Committee as evidenced here today by this consideration of Senate Bill S.1934 of the 101st Congress.

Can we resolve this dilemma of payment for services? Together, and to use an earlier phrase of Senator Conrad, "Yes We Can".

Mr. Chairman, this concludes my testimony. We ask for your favorable consideration. I will be pleased to respond to questions of the Committee.

1602-51934-5/7/90

EXHIBIT A

CONTRACT

This Contract made and entered into by and between the City of New Town, a municipal corporation, hereinafter called the city, and the Fort Berthold Housing Authority, hereinafter called owner, witnesseth:

Whereas, owner desires the services of the New Town Fire Department, the New Town Police Department and the New Town Water Department on premises located outside the limits of the city, said premises being described as follows:

> Commencing at the Northwest corner of the Southeast Quarter(SE¼) of Section 17, Township 152 North, Range 92 West, Mountrail County, North Dakota, proceed due East along the quarter section line a distance of 560 feet to the point of beginning of the property covered by this Contract; thence South along the East line of Second Avenue East of Highland Village Addition to the City of New Town, a distance of 534.1 feet to the North boundary line of Fourth Street North; thence East along the North line of Fourth Street North a distance of 410 feet; thence North a distance of 534.9 feet more or less to the quarter section line; thence West along the quarter section line to the point of beginning,

and is willing to pay a reasonable sum for such services.

It is therefore agreed by and between the parties hereto, as follows:

In consideration of the payment to the city of Eighty-five ($85.00) Dollars per unit per year for eighteen low rental housing units, an amount totaling $1,530.00 per year, which shall be the consideration for the Police and Fire Services, and an additional charge of $9.50 per unit for Water Department Services; It is understood by and between the parties hereto that paymentof money hereinbefore mentioned is to be tendered upon ____________ ______________ either on a monthly, [✓ quarterly], semi-annual or an annual basis, and city is to retain said money regardless of whether fire services are used by owner during the period of this Contract.

This Contract is to be in full force and effect for the period of July ______ years from the date of execution of the same as hereinafter set forth.

Upon payment of the above mentioned consideration city agrees that the Water Department, the Police Department and the Fire Department will furnish services to owner which are customarily furnished within the boundaries of said city, with the exception of maintenance of water & sewer lines within the hereinbefore described boundaries of the owner.

In Witness Whereof, the parties hereto set their hands and seals this 13 day of April 1967.

ATTEST:

Everett N. Olson, Auditor

CITY OF NEW TOWN

By Rolland A McMaster

Rolland McMaster, Mayor

ATTEST:

FORT BERTHOLD HOUSING AUTHORITY

By Robert Fox Executive Director

Aubd-S1934-5/7/90

Exhibit B
p.1

THE LAW OFFICES
OF
JAMES F. WAGENLANDER
SUITE 1020
THE UNIVERSITY BUILDING
810 SIXTEENTH STREET
DENVER, COLORADO 80202

JAMES F. WAGENLANDER
DAVID K. SCHOYER, OF COUNSEL

AREA CODE (303)
534-4567

SUMMARY OF MAJOR ISSUES
INVOLVING FORT BERTHOLD HOUSING AUTHORITY
COOPERATION AGREEMENT

The Fort Berthold Housing Authority is seeking a Cooperation Agreement between the Authority and the City of New Town. As the Authority's attorney I have drawn up and enclosed a contract which contains those provisions required by the United States Department of Housing and Urban Development. This agreement is now submitted for the Council's approval and the Mayor's execution.

This Agreement does three things. First, it restates and acknowledges that Fort Berthold housing projects are exempt from real estate taxes. Secondly, it pledges the City of New Town to cooperate with the development of the housing and provide water and sewer services. Thirdly, though no taxes are authorized in the Agreement, the Authority is committed to provide service payments to the City in lieu of taxes during the course of its ownership of these units to reimburse the City for certain services provided.

1. TAX EXEMPTION

Under federal law all public housing projects developed with HUD funds must be exempt and free from any local real estate taxes. Further under North Dakota State law all public housing authority property, including Indian housing authority property is exempt from real estate taxes. Thirdly trust property owned by the Fort Berthold Housing Authority is not subject to real estate taxes.

The exemption to the taxes under the law is basically the same for the Fort Berthold Housing Authority as it is for the Mountrail County Housing Authority which has units within the City of New Town presently being provided water and sewer services.

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Exhibit "B"
p.2

2. COOPERATION AND BENEFITS

Cities cooperate with such housing projects because they recognize the benefits to their communities inherent to providing this new housing. Often times the cities also will obtain free mains, sidewalks, and streets. In some cases some or all of these particular costs are paid for directly by the Housing Authority (i.e. on ND5-9 the Fort Berthold Housing Authority contributed $28,000 to layout 28 city lots, only 14 of these lots to be initially used by the Authority). In certain cases HUD Community Block Grant Funds are provided based upon the housing activities (i.e. on ND5-9 $102,000 was provided to the City of New Town). A third possibility involves Public Health Service funds being used to improve sewer and water lines because of the Indian population that will be served (i.e. on ND5-1 in 1967 they provided $17,870.48 in money and professional services to the City). The City of New Town has consistently benefited from the housing provided by the Authority and we trust that with this explanation you will not only be aware of these benefits but also conclude that the Indian Authority should not be treated any different than other non Indian authorities.

3. PAYMENT FOR SERVICES

The Federal Public Housing Program was modified many years ago to insure that local communities could not only receive outright certain capital improvements but also could obtain on going payments from housing authorities for services. This is to compensate for the tax exempt status of housing authority property. By law, however, the federal government sets a limit on how much an authority can pay annually plus it dictates how these payments shall be calculated. The Fort Berthold Housing Authority has agreed to provide the full 10% of "shelter rent" permitted by federal law (housing payment paid minus operating and utility costs) that it obtains from its tenants and pass this on to the local governments providing services to its units. It is difficult to ascertain the exact amount of these payments for tenant payments are calculated based upon a percentage of the individual tenant incomes. Presently on one project the Authority is collecting approximately $170 per unit and on another $171. Subtracting out utility costs the Authority can informally estimate that the shelter rents on at least these units presently average $40 per month. Therefore, $40 x 12 ÷ 10% equals $48 a year per unit. Though this is an extremely rough estimate of the service contribution it should give you the general picture of revenues that your Mayor has requested us to provide.

Presently the Fort Berthold has 18 units in New Town (ND5-1), 2 units under construction (ND5-8), 24 units being developed (ND5-9), and several projects tentatively planned for the future. The Authority proceeded with the development of its most recent project and also helped the City obtain its community block grant monies with the feeling that the necessary Cooperation Agreement would be executed without further delays. We believe that with its execution now both the City and the Authority have a frame work within which they can cooperate in the future in meeting common housing needs.

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Exhibit B
p.3

COOPERATION AGREEMENT

THIS AGREEMENT, entered into this 10th day of December, 19 79, · and between the Fort Berthold Housing Authority, herein called the "Local thority" and the County of N/A (if appropriate) and the City of New Town (if appropriate), both shall be herein called the "Municipalities". : states the exemption of Local Authority property from taxes, provides for Service yments to the Municipalities, and pledges the Municipalities to cooperate with e development of a specific number of housing units.

In consideration of the mutual covenants hereinafter set forth, the parties ereby agree to the following terms:

1. DEFINITIONS:

   (a) The term "project" shall mean the 100 units of housing amounting to one or more projects that may be developed on lands within the jurisdiction of the Municipalities (18 units of which are however outside the jurisdiction of the City of New Town) as developed by the Local Authority with financial assistance of the United States of America acting through the Secretary of Housing and Urban Development (herein called the "Government").

   (b) The term "taxing body" shall mean the Municipalities in which the project is situated and which may have the authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer.

   (c) The term "shelter rent" shall mean the total of all housing payments collected from all tenants of the project for dwelling rents or ownership payments after subtracting utility costs or allowances.

2. NOT TAXABLE

   Under the terms of this agreement and under State law it is hereby affirmed that the project is exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. The Municipalities agrees that it will not levy or impose any real or personal property taxes or special assessments upon such project or upon the Local Authority with respect thereto so long as either (a) such project is owned by a public body or governmental agency (including an Indian Housing Authority) and is used for low-rent housing purposes, or (b) any contract between the Local Authority and the Government for loans and annual contributions, or both, in connection with such project remain in force and effect, or (c) any bonds issued in connection with such project or any monies due to the Government in connection with such project remain unpaid, whichever period is the longest. During such period, the Local Authority shall make annual payments (herein called Service Payments) in lieu of any taxes and special assessments that may or may not be normally due and in payment for the public services and facilities furnished from time to time without other cost or charge with respect to such project.

3. SERVICE PAYMENTS

   (a) The Local Authority has secured or may endeavor to secure a contract or contracts with the Government for loans and annual contributions covering the project comprising the project each of which may be located within the cooperate limits of the Municipalities of adjacent there to.

AuBoL-S1934-5/7/90

Exhibit B
p.4

(b) Each such annual service payment shall be made after the end of each fiscal year as established for such project, and shall be in an amount equal to ten percent (10%) of the shelter rent collected by the Local Authority in respect to such project during such fiscal year; provided, however, that no payment for any year shall be made to the Municipalities in excess of the amount of the real property taxes which might be paid to the Municipalities for such year if the project were subject to taxation.

(c) If other local governmental entities are to provide services and facilities then the Local Authority shall distribute the Service Payments in an amount proportionately equal to the services and facilities provided. In no cases will such local governmental entities receive any portion of these funds if they do not provide services, further the total Service Payments made to all local governmental entities will not be allowed to exceed an amount equal to ten percent (10%) of the shelter rent.

(d) No lien against the project or assets of the Local Authority shall attach on account of the Local Authority's failure to make the payment in lieu of taxes as required by paragraph 3(b) hereof.

4. SERVICES AND COOPERATION

During the period commencing with the date of first occupancy by renters and continuing so long as either (a) such project is owned by the Local Housing Authority and is needed for low-income housing purposes or (b) any contract between the Local Authority and the Government for loans or annual contributions, or both, in connection with such project remains in force and effect, or (c) any bonds issued in connection with such project or any monies due to the Government in connection with such project remain unpaid whichever period is the longest, the Municipalities without cost or charge to the Local Authority or the tenants of such project, other than the Service Payments and ordinary water and sewer charges, shall:

(a) Furnish or cause to be furnished to the Local Authority and the tenants of such project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings and inhabitants in the Municipalities.

(b) Cooperate with the Local Authority by such other lawful action or ways as the Municipalities and the Local Authority may find necessary in connection with the development and administration of such project.

(c) In so far as the Municipalities may lawfully do so (a) grant such deviations from the building code of the Municipalities as are reasonable and necessary to promote economy and efficiency in the development administration of such project, and at the same time safeguard health and safety, and (b) make such changes in any zoning of the site and surrounding territory of such project as are reasonable and necessary for the development and protection of such project and the surrounding territory.

5. ACCEPTANCE OF MUNICIPAL IMPROVEMENTS

In respect to any project developed within the Municipality's jurisdiction further agrees that within a reasonable time after receipt of a written request therefore from the Local Authority, it will accept the dedication of (all interior streets, roads, alleys, and adjacent sidewalks within the area of such project, together with) all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the (grading, improvement, paving and) installation thereof in accordance with specifications acceptable to the Municipalities.

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Exhibit B
1.5

6. NO CONFLICTS OF INTEREST

No member of the governing body of the Municipalities or any other public official of the Municipalities who exercises any responsibilities or functions with respect to any project during his tenure or for one year thereafter shall have any interest, direct or indirect, in any project or any property included or planned to be included in any project, or any contracts in connection with such projects or property. If any such governing body member or such other public official of the Municipalities involuntarily acquires or had acquired prior to the beginning of his tenure any such interest, he shall immediately disclose such interest to the Local Authority.

7. GOVERNMENT CONCURRENCE

So long as any contract between the Local Authority and the Government for loans (including preliminary loans) or annual contributions, or both, in connection with this project remains in force and effect, or so long as any bonds issued in connection with this project or any monies due to the Government in connection with this project remain unpaid, this Agreement shall not be abrogated, changed, or modified without the consent of the Government. The privileges and obligations of the Municipalities and the Local Authority hereunder shall remain in full force and effect with respect to the project so long as the beneficial title to such project is held by the Local Authority or the United States Government. If at any time the beneficial title to, or possession of, this project is held by the United States Government, the provisions hereof shall inure to the benefit of and may be enforced by the United States Government.

8. MISCELLANEOUS

No Cooperation Agreement heretofore entered into between the Municipalities and the Local Authority shall be construed to apply to any project covered by this Agreement.

IN WITNESS WHEREOF, the appropriate Municipalities and the Local Authority ve respectively signed this Agreement and caused their seals to be affixed and tested as of the day and year first above written.

THE CITY:
(if appropriate)

EAL)

TEST:

CITY OF NEW TOWN

Sue Ferrel
City Auditor

By Rolland A McMaster
Mayor

THE COUNTY:
(if appropriate)

EAL)

TEST:

By ______________________

____
Clerk

THE LOCAL AUTHORITY:

EAL)

TEST:

FORT BERTHOLD HOUSING AUTHORITY
By ______________________
EXECUTIVE DIRECTOR

Joe Deane Jr.
Secretary

GOVERNMENT CONCURRENCE:

____

STATE OF NORTH DAKOTA
COUNTY OF MOUNTRAIL

Exhibit C

I, Karen H. Eliason, County Auditor in and for Mountrail County, North Dakota, do hereby certify that on the basis of the taxable valuation for the City of New Town within Mountrail County as follows: $ 581,416

The tax levies for said City for the 19 87 year are:

FUND	MILL RATE	TAX LEVY
General Levy......................	35.99	20,925.16
Special Assessments Deficiency...		
Social Security...................	13.69	7,959.59
City Share of Special Assmts.....	50.92	29,605.70
Advertising.......................	.50	290.71
Emergency.........................	1.00	581.42
Planning Commission (City).......	1.00	581.42
Cemetery..........................	2.00	1,162.83
City Airport......................	4.00	2,325.66
Fire Department Reserve..........	2.00	1,162.83
City Library......................	4.00	2,325.66
20% Cost of Paving................		
Urban Renewal.....................		
20% Water & Sewer Improve........		
Ambulance Reserve.................		
Recreation........................	2.50	1,453.54
Band..............................	1.00	581.42
Fire Station Building............	5.00	2,907.08
Park General Levy................	10.00	5,814.16
Park Special Assessments.........		
Social Security...................	1.50	872.12
Construction (Pool)..............		
TOTAL......................	135.10	78,549.30

Dated at Stanley, North Dakota, this 29th day of October, 19 87.

Karen H. Eliason
Karen H. Eliason
Mountrail County Auditor

(Please acknowledge receipt by returning the extra copy herewith showing thereon any suggested corrections or questions and/or your OK. Must be returned by November 9, 1987.)

REMARKS:

DATE: 11-3-87 CITY AUDITOR

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5/7/90

Exhibit D

OFFICE of the MOUNTRAIL COUNTY AUDITOR
Karen H. Eliason - County Auditor
Courthouse - Box 69
Stanley, North Dakota 58784
(701) 628-2145

STATE OF NORTH DAKOTA
COUNTY OF MOUNTRAIL

I, Karen H. Eliason, County Auditor in and for Mountrail County, North Dakota, do hereby certify that on the basis of the taxable valuation for the City of New Town within Mountrail County as follows: $ 582,478

The tax levies for said city for the 19 88 year are:

FUND	MILL RATE		TAX LEVY
General Levy	33.42	$	19,466.41
Special Assessments Deficiency		$	
Social Security	10.11	$	5,888.85
City Share of Special Assmts.	51.54	$	30,020.92
Advertising	.50	$	291.24
Emergency	1.01	$	588.30
Planning Commission (City)	1.01	$	588.30
Cemetery	2.02	$	1,176.61
City Airport	4.04	$	2,353.21
Fire Department Reserve	2.02	$	1,176.61
City Library	4.04	$	2,353.21
20% Cost of Paving		$	
Urban Renewal		$	
20% Water & Sewer Improve.		$	
Ambulance Reserve		$	
Recreation	2.53	$	1,473.67
Band	1.01	$	588.30
Fire Station Building	5.05	$	2,941.51
Park General Levy	10.58	$	6,162.62
Park Special Assessments		$	
Social Security	1.50	$	873.72
Construction (Pool)		$	
		$	
		$	
TOTAL	130.38	$	75,943.48

Dated at Stanley, North Dakota, this 26th day of October, 19 88.

Karen H. Eliason
Karen H. Eliason
Mountrail County Auditor

(Please acknowledge receipt by returning the extra copy herewith showing thereon any suggested corrections or questions and/or your OK.)

REMARKS:

DATE: 11-4-88 CITY AUDITOR

MUST BE RETURNED BY November 4, 1988.

School
City
County Levy

Avid
S 1934
5/7/90

OFFICE of the MOUNTRAIL COUNTY AUDITOR

Exhibit E

Karen H. Eliason - County Auditor
Courthouse - Box 69
Stanley, North Dakota 58784
(701) 628-2145

STATE OF NORTH DAKOTA
COUNTY OF MOUNTRAIL

I, Karen H. Eliason, County Auditor in and for Mountrail County, North Dakota, do hereby certify that on the basis of the taxable valuation for the City of New Town within Mountrail County as follows: $ 558,673

The tax levies for said city for the 19 89 year are:

FUND	MILL RATE	TAX LEVY
General Levy	38.00	$ 21,229.57
Special Assessments Deficiency		
Social Security	9.87	5,514.10
City Share of Special Assmts.	51.50	28,771.66
Advertising	.50	279.34
Emergency	1.00	558.67
Planning Commission (City)	1.00	558.67
Cemetery	2.00	1,117.35
City Airport	4.00	2,234.69
Fire Department Reserve	2.00	1,117.35
City Library	4.00	2,234.69
20% Cost of Paving		
Urban Renewal		
20% Water & Sewer Improve.		
Ambulance Reserve		
Recreation	2.50	1,396.68
Band	1.00	558.67
Fire Station Building	5.00	2,793.37
Park General Levy	10.00	5,586.73
Park Special Assessments		
Park Social Security	2.00	1,117.35
Construction (Pool)		
Park & Rec. Facililities	5.00	2,793.37
TOTAL	139.37	77,862.26

Dated at Stanley, North Dakota, this 31st day of October, 19 89.

Karen H. Eliason
Karen H. Eliason
Mountrail County Auditor

(Please acknowledge receipt by returning the extra copy herewith showing thereon any suggested corrections or questions and/or your OK.)

REMARKS:

DATE: 11-2-89 CITY AUDITOR

MUST BE RETURNED BY November 10, 1989

TESTIMONY OF WADE F. WILLIAMSON
TO SELECT COMMITTEE OF INDIAN AFFAIRS
IN FAVOR OF SENATE BILL #1934
MAY 7, 1990 - 2:00 P.M.

GOOD AFTERNOON, MY NAME IS WADE F. WILLIAMSON AND I AM THE MAYOR OF PARSHALL, NORTH DAKOTA. PARSHALL IS A SMALL RURAL COMMUNITY LOCATED IN THE NORTHEAST QUADRANT OF THE FORT BERTHOLD INDIAN RESERVATION IN WESTERN NORTH DAKOTA. ON BEHALF OF THE RESIDENTS OF THE CITY OF PARSHALL I WOULD LIKE TO THANK CHAIRMAN INOUYE AND THE SENATORS OF THIS SELECT COMMITTEE FOR ALLOWING ME TO TESTIFY IN FAVOR OF SENATE BILL 1934

I WOULD LIKE TO OFFER SOME BACKGROUND INFORMATION SO THAT AN UNDERSTANDING CAN BE MADE OF THE FINANCIAL PROBLEMS FACING OUR CITY AND HOW THIS BILL WILL ALLEVIATE THEM.

BASED UPON THE 1980 CENSUS, PARSHALL HAS 1,079 RESIDENTS OF WHICH 73 PERCENT ARE WHITE AND 27 PERCENT ARE NATIVE AMERICAN. A LARGE SHARE OF THE NATIVE AMERICAN RESIDENTS LIVE IN THE 75 LOW INCOME HOUSING UNITS LOCATED IN THE CITY. THESE UNITS WERE CONSTRUCTED WITH FUNDS FROM THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND CONSTRUCTED BY THE FORT BERTHOLD HOUSING AUTHORITY. ALL OF THESE UNITS ARE OPERATED AND MAINTAINED BY THE FORT BERTHOLD HOUSING AUTHORITY AND ARE EXEMPT FROM PAYMENT OF REAL ESTATE TAXES AND SPECIAL ASSESSMENTS.

THE FORT BERTHOLD HOUSING UNITS COMPRISE APPROXIMATELY 20 PERCENT OF THE TOTAL HOUSES WITHIN THE CITY OF PARSHALL. AS A RESULT, THE CITY HAS SIGNIFICANT LOSS OF ITS TAX BASE. I SHOULD NOTE THAT ADDITIONAL LOTS IN PARSHALL ARE OWNED BY INDIVIDUAL INDIANS AND BY THE THREE AFFILIATED TRIBES AND ARE HELD

IN TRUST STATUS BY THE UNITED STATES, ACTING THROUGH THE BUREAU OF INDIAN AFFAIRS. THESE LOTS ARE ALSO EXEMPT FROM TAXATION AND COMPRISE ANOTHER 10 TO 15 PERCENT OF THE TOTAL TAX BASE.

PRESENTLY THERE IS UNDERWAY AN APPLICATION TO THE BUREAU OF INDIAN AFFAIRS TO REMOVE ADDITIONAL HOUSING UNITS FROM THE TAX ROLLS WITHIN THE CITY OF PARSHALL. THIS STEMS FROM RECENT PURCHASES OF PREEXISTING HOUSES WITHIN THE CITY BY THE FORT BERTHOLD HOUSING AUTHORITY. THIS WILL CREATE MORE EROSION OF PARSHALL'S TAX BASE.

IT IS MY BELIEF THAT NEW HOUSING UNITS WILL BE NECESSARY TO PROVIDE FOR AN INCREASING NATIVE AMERICAN POPULATION. PLANS FOR SEVERAL UNITS HAVE ALREADY BEEN FORMULATED AND FUNDS HAVE BEEN ALLOCATED FOR THIS PURPOSE BY THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT. THE CITY OF PARSHALL AND IT'S BUSINESS COMMUNITY LENDS ITS SUPPORT TO THE DEVELOPMENT OF THESE PROJECTS. HOWEVER, THE CITY CANNOT PROVIDE SERVICES TO NEW UNITS AND CONTINUE TO PROVIDE NECESSARY SERVICES TO ITS PRESENT RESIDENTS, BOTH NATIVE AMERICAN AND WHITE, WITHOUT SOME FORM OF COMPENSATION FOR ITS LOST TAX BASE. GROWTH MUST BE ACCOMPANIED WITH TAX REVENUE OR REIMBURSEMENTS SUPPLANTING THE LOSS OF TAX REVENUE.

THE BILL BEFORE YOU TODAY ALLOWS FOR GROWTH, IT ALLOWS FOR NEW CONSTRUCTION OF NEEDED HOUSING UNITS, IT PROVIDES GREATER BUSINESS OPPORTUNITIES FOR THE CITIZENS OF PARSHALL. IT IS THE MOST IMPORTANT PIECE OF LEGISLATION AFFECTING THE RESIDENTS OF PARSHALL IN RECENT YEARS.

NECESSARY SERVICES PROVIDED BY THE CITY OF PARSHALL TO ITS RESIDENTS INCLUDE WATER AND SEWER SYSTEM, GARBAGE SERVICE, STREETS AND STREET LIGHTS, POLICING, A COMMUNITY HALL, A LIBRARY, AN AIRPORT, A CEMETERY, A CITY PARK AND VARIOUS RECREATIONAL FACILITIES. FUNDS ARE ALSO RAISED BY TAXATION TO PAY FOR CITY PERSONNEL AND EMPLOYEES TO SUPERVISE AND MAINTAIN THE SERVICES I HAVE MENTIONED. AMBULANCE AND FIRE PROTECTIONS ARE ON A VOLUNTEER BASIS.

I WOULD LIKE TO FOCUS ON THE FOLLOWING POINTS:

1. THE PRESENT SYSTEM OF FUNDING, BASED ON A PERCENTAGE OF COLLECTED SHELTER RENT LESS UTILITIES IS UNWORKABLE. PARSHALL HAS NEVER RECEIVED ANY PAYMENT FOR SERVICES FROM THIS FORMULA BECAUSE COLLECTED RENT IN MOST CASES IS EQUAL TO OR LESS THAN THE UTILITIES. A DIFFERENT CONCEPT OF REIMBURSEMENT FOR THE LOSS OF TAX REVENUE IS NEEDED AND SENATE BILL 1934 ADDRESSES THESE CONCERNS.
2. IT SHOULD BE POINTED OUT THAT THIS CONCEPT OF REIMBURSEMENT IS NOT A NEW IDEA. LOCAL SCHOOL DISTRICTS, INCLUDING THE ONE IN PARSHALL, RECEIVE FEDERAL IMPACT AID FUNDS FOR EDUCATION UNDER PUBLIC LAW 874.
3. I DO NOT BELIEVE THAT THE 1937 HOUSING ACT, AS REVISED BY THE LEGISLATIVE REORGANIZATION ACT OF 1970, ENVISIONED THE TYPE OF HOUSING DEVELOPMENTS WHICH EXIST ON INDIAN RESERVATIONS. THE LEGISLATION FOCUSED ON INNER CITY HOUSING NEEDS AND TRIED TO ENCOURAGE DEVELOPMENT OF PUBLIC HOUSING BY REDUCING TAX BURDENS. IN LARGE COMMUNITIES THE PERCENTAGE OF PUBLIC HOUSING, AS COMPARED TO THE OVERALL TAX BASE, IS QUITE SMALL AND THE LOSS OF TAX BASE IS MORE READILY ABSORBED WITHOUT SUCH DETRIMENTAL IMPACT. IF IT IS INCREASINGLY DIFFICULT FOR CITY AND STATE GOVERNMENTS TO OPERATE

AT A LEVEL WHERE THEY RECEIVE 95 TO 100 PERCENT OF THEIR TAX REVENUE, HOW IS THE CITY OF PARSHALL TO OPERATE AT ONLY 65 TO 70 PERCENT? IT IS EVIDENT THAT IF OUR CITY IS TO CONTINUE TO PROVIDE SERVICES TO ITS RESIDENTS, IT MUST RECEIVE SOME TYPE OF REIMBURSEMENT OF ITS LOST TAX BASE.

4. IN ORDER TO BE ABLE TO MAINTAIN ONGOING QUALITY SERVICES THE RATE OF ASSESSMENT ON TAX EXEMPT PROPERTIES SHOULD BE EQUAL TO OTHER PROPERTIES OF LIKE VALUE.
5. I FEEL THAT THE GOVERNMENT HAS A RESPONSIBILITY TO ASSURE THAT SERVICES CAN BE PROVIDED TO HOUSING UNITS BUILT WITH FEDERAL FUNDS ON INDIAN RESERVATIONS.

FINALLY I WOULD LIKE TO THANK SENATOR CONRAD AND SENATOR BURDICK FOR THEIR EFFORTS IN INTRODUCING SENATE BILL 1934. IT IS THE RESULT OF MANY MEETINGS BETWEEN REPRESENTATIVES OF PARSHALL, NEW TOWN, THE THREE AFFILIATED TRIBES, THE FORT BERTHOLD HOUSING AUTHORITY, THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT, MEMBERS OF SENATOR BURDICK'S STAFF AND SENATOR CONTRAD WHO ATTENDED PERSONALLY.

SUBMITTED THIS 4TH DAY OF MAY, 1990

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WADE F. WILLIAMSON, MAYOR
PARSHALL, NORTH DAKOTA